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Report of the Industrial Inquiry Commission into bargaining patterns in the Construction Industry in Ontario



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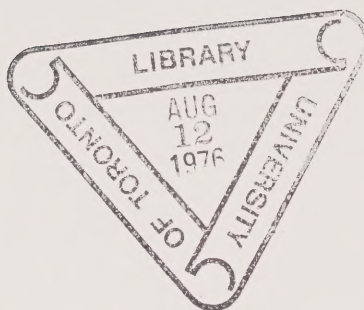


REPORT OF THE INDUSTRIAL INQUIRY

COMMISSION INTO BARGAINING PATTERNS

IN THE CONSTRUCTION INDUSTRY

MAY, 1976



To: The Minister of Labour

During December 1974, pursuant to s.34 of the Labour Relations Act, R.S.O. 1970 c.232, I was appointed by the Minister of Labour to conduct an industrial inquiry commission into bargaining patterns in the construction industry. I have the honour to submit, herewith, my report.

May 10th, 1976

D.E. Franks

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CHAPTER 1

INTRODUCTION

This Inquiry Commission resulted from one of a series of recommendations made by the Construction Industry Review Panel to the Minister of Labour. The Construction Industry Review Panel is a joint labour-management advisory body which advises the Minister of Labour on matters relating to the construction industry. Its members are all directly involved with the construction industry, and from my experience as vice-chairman of that group, I think it can be said that they are honestly attempting to improve labour relations for the betterment of all those involved in the construction industry, both employees and employers.

The specific recommendation made by the Review Panel, which gave rise to this Inquiry, was that a "system of wider-area bargaining be introduced into the construction industry". The term "wider-area bargaining" has been used in various areas in the United States to refer to the systematic reduction of the number of bargaining situations in the construction industry. The terms of reference given this Inquiry specify the term

"wider-area bargaining" by giving the following directives:

- 1) to inquire into the existing bargaining areas and bargaining patterns in the construction industry;
- 2) to define the problems resulting from the present bargaining patterns in the construction industry;
- 3) to propose methods for reducing and rationalizing the number of bargaining patterns in the construction industry.

Methodology

The three items listed in the terms of reference raise three distinctly different problems, namely, observing, analyzing the problem and recommending a solution. With respect to the first directive I obtained the assistance of the Research Branch of the Ministry of Labour. Collective agreements are filed with that Branch of the Ministry and an analysis of the agreements on file would indicate the existing areas and patterns of bargaining in the industry. I am indebted to Mr. Len Haywood and Mr. Don Reshetnyk for their efforts in obtaining this information.

The second task assigned this Inquiry, namely,

that of defining the problems resulting from the present bargaining patterns, raised a very difficult problem. Upon my appointment I began a series of consultations with various people involved in the bargaining process in the construction industry. This enabled me to obtain an appreciation for the concerns felt by different people involved in the industry. During this same time a large percentage of the construction industry agreements were being renegotiated and this proved to be an opportune time for observing the operation of the bargaining processes and its various strengths and defects.

Throughout the consultation stage it became clear that if this Inquiry was to solve any problems it would need both the cooperation and assistance of those involved in the construction industry. If this Inquiry was to recommend changes, then it was of paramount importance that the parties indicate the sort of changes they were prepared to accept. It was only through the assistance of those in the industry at this consultation stage that various options could be discussed in the light of existing problems.

The consultation stage ended with the issuance of a Background Paper by this Inquiry in October, 1975. The purpose of the Background Paper was to facilitate representations to the Inquiry by those wishing to make

such representations. In effect, the Background Paper responds to the second directive set out in the terms of reference to this Inquiry; that is, it offers a tentative definition of the problems resulting from the existing bargaining patterns in the construction industry. For convenience, I have included the text of the Background Paper as Appendix "A" to this report.

The issuance of the Background Paper paved the way for representations to the Commission on proposals for reducing and rationalizing the number of bargaining patterns in the construction industry. The month of December had been set as the deadline for making representations. However, in response to numerous requests, it was necessary to extend this time to the end of January, 1976. During the month of January I held meetings in various areas of the province. These meetings were very informal, and although some briefs were presented at these meetings, generally they took the form of an open discussion of various concerns about matters before the Inquiry Commission. In Appendix "B" of this report I have listed the various dates and places of these meetings and a list of the newspaper advertisements giving notice of these meetings.

The main response from the construction industry came at the meetings in Toronto on January 27

to January 30. In those four days I received a number of impressive briefs from various interested organizations. In Appendix "C" I have listed the various organizations that have submitted briefs and made representations to the Inquiry.

The overall tone of the various briefs and representations that I have received can only be described as constructive. Most of the organizations concerned took the opportunity to propose realistic and practical changes, conscious of the fact that there are varied concerns for each side in labour-management relations. It is only in such a context of mutual recognition and respect that such difficult problems as those before this Commission can be constructively dealt with, and I am extremely grateful to those who adopted this approach.

CHAPTER 2

THE PRESENT BARGAINING PATTERNS

(1) Some Structural Characteristics of the Construction Industry

Most of us have at one time or another engaged in the wistful art of being a sidewalk superintendent. From such casual encounters with the construction industry most of us feel we have a general idea of what is meant by the broad term "construction industry". This report, however, is not about the construction industry as a whole, but about a very specific part of the industry which few people ever encounter, namely, the labour relations system which operates in the construction industry.

There is no need to present a description of the construction industry in the present report. It is generally acknowledged to be an extremely large and important part of the economy, and in recent years it has been the subject of numerous studies by those both inside and outside of government. Indeed, the complaint was made to the Inquiry that the industry has been studied too

much, and very little has been done to improve matters.

Before we delve into labour relations in the construction industry there are two important characteristics of the industry upon which I would like to place some emphasis. These two structural characteristics can be termed "mobility" and "specialization". There are, no doubt, other characteristics that are of great importance that perhaps ought to be mentioned. However, these two play a pervasive and complicated role with respect to labour relations in the construction industry.

The term "mobility" refers to the fact that construction is done at a job site and the work, in effect, moves from one job site to another job site. Thus, the people in the construction industry, both employees and employers, move from site to site. In some cases the duration of work at the job site is for a short period of time. In other cases it may go on for long periods of time, even years. Further, the shift from job site to job site may in some circumstances be a local shift. In other circumstances considerable distances may be involved. Thus, the mobility of the construction industry is itself a variable and complex phenomenon but, nevertheless, one that permeates all aspects of construction.

The amount of "specialization" in the construction industry is extremely extensive. This characteristic applies to both the employees and the employers in the industry and is in many respects analogous to the division of labour that occurs on the assembly line of a manufacturing plant. The employees specialize as a result of the range of skills they possess, the type of work they are prepared to do, or their previous work experience in construction. On the other hand, employers also specialize in terms of skills and experience. In many instances the specialization amongst employers is related to the specialization amongst the employees, and a substantial aspect of competition in the construction industry is, in effect, competition between different specialties.

These two characteristics which I have referred to as "mobility" and "specialization" operate together to impose limits on what can be done to change matters in the construction industry. Those who suggest the "industrialization" of both trade unions and employers probably make the mistake of ignoring the operation of these basic characteristics. In certain circumstances these characteristics combine to create the tendency towards fragmentation and localization of the construction industry. In other circumstances these characteristics have exactly the opposite effect

requiring centralization to solve the problems they create. One thing, however, is clear. The operation of these two characteristics creates the wide range of different environments in which any system of labour relations in the construction industry must operate.

(2) Labour Relations in the Construction Industry

It is frequently noted that labour relations in the construction industry are considerably different from labour relations in other industries, such as manufacturing. Unfortunately, little emphasis is placed on understanding these differences. In fact, both the trade unions in the construction industry and the employers in this industry, play essentially different roles from their industrial counterparts.

Perhaps the best insight into this difference can be obtained by considering the stable or long-term relationship in the construction industry. Whereas, in other industries the stable relationship is between an employee and an employer, in the construction industry the stable relationship is between the individual and the work he is capable of performing, that is, his trade. The shift from job site to job site frequently involves working for different employers. Thus, the individual

becomes identified by his skills or experience rather than by his employer. This, in turn, translates into a stable relationship between the individual and the trade union of which he is a member. Thus, the essential difference between the construction industry and other industries for labour relations purposes is that the individual employee identifies himself as a member of a particular trade union, rather than an employee of a particular employer. This has significant implications when one considers the role of a trade union and the role of an employer in the construction industry.

Broadly speaking, a trade union in construction represents people who have certain skills or are prepared to do a certain type of work. The range of these skills is referred to as the jurisdiction of the trade union. The goal of a construction trade union is, not simply to represent the employees of an employer, but rather to represent all of the people within its jurisdiction, and thus to serve as a source of supply of such employees for any prospective employer. The result is that the trade unions in construction are prepared to, and frequently do, perform the personnel function for the employer.

Some employers in construction run their own personnel offices and hire their own employees. This

is limited by the fact that many employers are not in a position to offer all their employees continuous employment throughout the year. Although some employers keep a nucleus of employees for long periods of time, the total number of employees is dependent upon the level of activity at various job sites and is thus subject to large fluctuations. In order to cope with this fluctuation the employer frequently turns to the union to supply men from its hiring hall.

The construction trade union, therefore, performs two distinct functions in the representation of its members. First, it negotiates wage rates and working conditions on behalf of its members; secondly, it allocates its available members to various employers at various work sites on the terms and conditions negotiated. This report deals only with the first of these functions, namely, the negotiation of collective agreements.

(3) The Characters Involved

Throughout this report reference will be made to a number of different institutions. Since many people are not familiar with the role played by these various institutions, it might be helpful to set out a brief description of those involved in labour relations in the construction industry.

The Trade Union Side:

The largest and most important trade unions that represent employees in the construction industry are referred to as the "Building Trades Unions". There are other independent unions that organize in construction such as the Christian Labour Association of Canada. Further, some of the industrial trade unions perform "in house" construction for their employers. However, these other trade unions are not a significant presence in the construction industry in terms of collective bargaining. Building trade unions are craft unions whose principal membership is in construction, although some also represent employees in manufacturing or in the fabricating of construction materials.

The unions which make up the building trades are frequently referred to as "International" unions because they represent tradesmen in both the United States and Canada. Generally, these organizations have been in existence for long periods of time, in many cases over 100 years. Although one should be cautious of generalizations in most instances these International unions were formed from various local trade unions and their constitutions reflect their composition from local trade unions. More will be said of this later, but for our present purposes these Internationals can also be

referred to as "Parent" trade unions since the various locals in the various trades are chartered by these parent trade unions.

Each of the International Unions claims jurisdiction over portions of construction activity. Taken together, the various Internationals cover the whole field of construction activity. A number of such unions have affiliated to form a group called the "Building Trades Department" of the AFL/CIO. One other trade union which also represents some construction employees, namely, the Teamsters, is a former affiliate of the Building Trades Department. The following is a list of the various organizations affiliated with the Building Trades Department which are active in Ontario:

- International Association of Heat and Frost Insulators and Asbestos Workers
- International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers
- Bricklayers, Masons and Plasterers International Union of America
- United Brotherhood of Carpenters and Joiners of America
- International Brotherhood of Electrical Workers
- International Union of Elevator Constructors
- Laborers' International Union of North America
- Wood, Wire and Metal Lathers' International Union

- International Union of Operating Engineers
- Brotherhood of Painters, Decorators and Paperhangers of America
- Operative Plasterers' and Cement Masons International Association of the United States and Canada
- United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada
- Sheet Metal Workers International Association
- International Association of Bridge, Structural and Ornamental Iron Workers

The general role of the Building Trades Department is to deal with relations between the various affiliated unions. It is, however, very important to understand that each of the trade unions which makes up the Building Trades Department is in itself an independent and autonomous body. Each International, in turn, has the power to deal with relations between various locals chartered by that body.

As noted above, each local trade union, although chartered by a parent trade union is in itself a separate entity which frequently has significant powers under the constitution and bylaws of its International. In most instances, in Ontario, the local is responsible for negotiating the collective agreement on behalf of its members and the general administration of the hiring halls. Generally, the day-to-day affairs of the local

are looked after by a business agent or business manager elected by the members of the local.

In some instances locals of the same trade union have joined together to form a district or provincial council. Some councils engage in collective bargaining; however, in other cases, the council deals only with matters of general concern to the various member local trade unions. These councils are quite different from Building Trade Councils. There are numerous local Building Trades Councils, and there is also in Ontario a Provincial Building Trades Council. These councils are chartered by the Building Trades Department and deal with matters of concern to the various building trades locals which are affiliated with such councils.

There are also examples of councils of trade unions which have been formed specifically for the purposes of collective bargaining. In some cases, these are multi-trade councils; in other cases, they are councils made up of locals within a single trade.

The Employer Side:

Distinctions between contractors are made in a number of ways. Perhaps the commonest distinction is between the general contractors and subcontractors. The

general contractor, as the term implies, usually has control over the building project. He is thus the construction employer who deals directly with the owner or purchaser of construction. The general contractor, however, will frequently subcontract portions of the work on a job site to other contractors who are known generally as subcontractors. Most subcontractors are basically trade contractors in that they perform work which is defined by one or two specific construction trades. There are, however, contractors which are more accurately described as "specialty" contractors since they limit their activity to very specific work, frequently falling within the scope of one trade.

The distinction between general contractors and subcontractors reflects the degree of specialization in the construction industry. The system allows for extensive division of labour and frequently a subcontractor will, in turn, subcontract to another contractor specific portions of his subcontract. The matter has been confused in recent times by the development of certain businesses which are frequently described as "contract brokers" where the contractor will have few, if any, employees of his own, but will subcontract all of the work in his contract to various other contractors who employ the tradesmen on the job site.

Contractors have, in turn, formed various associations. Although the origins of many of these associations were for general purposes, over the years these associations have become involved in labour relations. The reasons for this development are important and will be dealt with later in this report. The employer associations, by and large, reflect the differences in the various types of contractors. Thus, general contractors have associations of general contractors and trade contractors have trade contractor associations, and there are also specialty associations of specialty contractors. Some associations are local in scope; others are provincial or national.

Recently there has been a tendency for all associations dealing with labour relations to form an overall association. Thus for a time the Ontario Federation of Construction Associations (OFCA) was a confederation of various construction associations. In recent years the Construction Labour Relations Association of Ontario (CLRAO) has been an association of direct contractor members dealing with labour relations on their behalf.

The Purchasers:

Another recent development has been a tendency for the purchasers of construction to develop associations.

In some municipalities various owners have formed associations which directly or indirectly get involved with labour relations in the construction industry. On a province-wide basis, a number of the purchasers of large industrial construction have also formed an association called the Owner Client Council of Ontario. The role played by such groups is of considerable importance since they are the people who ultimately pay the costs resulting from construction industry negotiations.

(4) Bargaining

As noted above, the construction local trade union performs two distinct and separate roles, i.e., bargaining for a collective agreement and the administration of the collective agreement and the hiring hall. Whereas, the administration of the hiring hall is a day-to-day affair, bargaining for a collective agreement is an event which only occurs every few years.

It is imperative to understand just what the parties are doing when they negotiate a construction industry collective agreement. To say simply that they are determining the wages and working conditions for those employees affected by that agreement is to oversimplify the process to the point of distorting it. To

understand what is going on we need to examine how the agreement they are negotiating operates in more detail.

The most important characteristic of the construction industry collective agreement is that it is a "standard area" collective agreement; that is, it is the only collective agreement available to an employer from that union and covering those employees. The coverage of the collective agreement may or may not be spelled out in the agreement, but basically coverage is determined in terms of a geographical area, a particular trade, and on occasion, a particular type of work. Certain elements of this coverage may be implicit because of the scope of operation of the particular local trade union; that is, a local trade union may only represent a certain trade in a certain area for employees performing a certain type of work. The point that is frequently missed, however, is that there is a very strong ethic in the construction industry that the agreement applies equally to all employees and all employers within its defined or implicit scope.

The importance and reason for this ethic is frequently not understood. On the surface it appears as though this simply removes wage costs as an element of competition amongst contractors bidding on a particular job. Each employer would have to pay the same wage rates

and provide the same working conditions as any other employer. However, if the union were to offer different agreements to different employers, the obvious result would be that certain employers would have an unfair advantage in the matter of wage costs. That would put the trade union in the position of determining which contractors would remain competitive and which contractors would be forced out of business because they could not compete. This is not a power which the unions have sought, nor is it apparently a power which they might want. Indeed, it is generally regarded as unethical for a trade union to allow one employer such a competitive advantage over other employers.

Nevertheless, situations arise when for perfectly valid reasons distinctions in wages, for instance, are made between different types of construction. The result is that there are circumstances in which an argument arises as to which wage rate, etc., applies. This occurs between what might be termed "parallel collective agreements", and when it occurs it usually gives rise to a bitter conflict. More will be said about parallel agreements later in this report since they constitute a serious problem when examining the overall bargaining patterns in the construction industry.

The fact that construction industry collective

agreements are standard agreements helps to explain the rise of, and the role played by, construction associations in collective bargaining. As was noted in the Background Paper, bargaining originally developed between a local trade union and the various employers hiring members from that local. In those bargaining sessions the problem was to set the wage rate for tradesmen and other terms of employment and working conditions. This then became the standard area agreement. As employer associations developed one of the functions of the association, or a branch of the association, was to bargain with the trade union to set the standard area agreement. As the industry grew in size and complexity, the role of the association became more formal until a number of associations emerged as full-fledged bargaining agents for employers dealing with a specific trade union.

In recent years there has been a tendency to develop the status of such employer organizations as bargaining agents. Thus, in 1971, legislation in Ontario was introduced to accredit employer organizations as bargaining agents. This legislation is very analagous to certification of trade unions under the Labour Relations Act. It makes the accredited employers' organization the bargaining agent for all employers in a defined group whether or not they are members of the association. The purpose in introducing such a protected status for

employer associations was not so much to give them a new status or increased power but to protect associations from a tactical device open to trade unions during bargaining. If a trade union, during the course of bargaining with an association, was having difficulty in obtaining its demands, it could sign a collective agreement with individual employers meeting a certain demand and containing an agreement to be bound by the results of subsequent negotiations between the trade union and the association. However, once an association is accredited such individual bargaining is prohibited under the Labour Relations Act. Thus, the association is protected from the tactic of interim agreements. It is, however, important to note that whether the association is accredited or not, the net result of bargaining between the trade union and the association is a standard collective agreement. In this sense the accreditation legislation simply recognizes what construction associations, whether formal or informal, have been doing for a number of years.

The above paragraph also serves to illustrate the most difficult problem faced by this Inquiry Commission. Frequently, the union's tactic of signing interim agreements resulted in the destruction of an association as part of the bargaining structure in the construction industry. This is an example of the

difference between the structure of bargaining and the content of bargaining. Simply put, matters which start out as part of the content of bargaining can end up affecting the structure of bargaining itself. It is important to keep in mind throughout this report that our concern is with the structure of bargaining rather than with the content of bargaining. However, unless the structure of bargaining can be protected from matters which arise from the content of bargaining, any attempt to restructure bargaining will ultimately prove futile.

The question which we posed at the beginning of this section is still not answered. What are the ~~panies~~ doing when they are bargaining for a collective agreement? A distinguished commentator on labour relations in the construction industry makes the point

"There are, of course, no generally accepted standards by which to measure how high wages should be, or how many strikes are too many."¹

Nevertheless, it can be said that the content of the collective agreement is not isolated from the construction marketplace. If wage costs are too high, then construction may become too expensive and the amount of work for the

¹Mills, D.Q.
1972: Industrial Relations and Manpower in
Construction; The M.I.T. Press, Cambridge,
Massachusetts, and London, England, p. 26.

construction tradesmen decreases. On the other hand, if wages are not high enough, the skilled tradesmen will work in other industries and there will not be enough people to build construction projects. These are fine and sophisticated balances and the measure of any system of labour relations in construction is the ability of that system to ensure that such decisions are properly made.

(5) The Present Bargaining Patterns

When one examines the standard construction industry agreements operating in the province, the only generalization that can be made is that no patterns emerge from the present situation. In some instances bargaining is done on a provincial basis; in other instances it is done locally. Although the majority of agreements are local agreements, about half of the various agreements, by trade, are province wide in scope. Although most of the province-wide agreements are a result of mobility of tradesmen and employers throughout the province, there are examples of primarily local employment which are also bargained for on a province-wide basis. Although most bargaining situations relate to clearly defined construction trades covering clearly defined areas, there are a number of other agreements

which relate to specific employees (subsections of a trade) or specific agreements relating to specific sectors or types of construction.

The following is a brief description of the standard area collective agreements for the various trades:

Asbestos Workers

Asbestos Workers have two collective agreements for insulation mechanics. The agreement by Local 95 covers the province of Ontario except the eastern portion. The eastern portion for the province is covered by an agreement with Local 58.

Boilermakers

One collective agreement by the International covering eight provinces and the North West Territories.

Bricklayers

Two province-wide collective agreements, one covering bricklayers and stonemasons, and in some areas plasterers; the other agreement covering marble, tile and terrazzo mechanics, and in some areas cement masons and resilient floor mechanics. In addition, there are six local collective agreements covering residential construction.

Carpenters

Two province-wide agreements for millwrights, one province wide covering drywall and thirty-two various local collective agreements.

Electrical Workers (IBEW)

Fourteen local collective agreements.

Elevator Constructors

One Canada-wide collective agreement.

Labourers

Two province-wide agreements relating to pipeline and utility construction. Thirty-nine various collective agreements involving sixteen different locals for various local areas and various sectors.

Lathers

One province-wide agreement.

Operating Engineers

Six province-wide collective agreements and twenty-five agreements covering various local areas and sectors.

Painters

There are three province-wide collective agreements and two residential collective agreements. This union also has fourteen local collective agreements covering glaziers, one local agreement covering floor layers and one local agreement for plasterers.

Plasterers

Two province-wide agreements for steeplejacks and waterproofing and fifteen local collective agreements, nine of which are for plasterers and six for cement finishers.

Plumbers

There are four Canada-wide agreements involving sprinkler fitters, pipelines, lead burners and pneumatic controls. One province-wide agreement involving refrigeration mechanics. There are also twenty local collective agreements by seventeen locals.

Sheet Metal Workers

With respect to sheet metal workers there are sixteen agreements for various local areas and sectors. With respect to roofers, there are twelve local collective agreements.

Iron Workers

For structural iron workers there is one collective agreement by five locals for the province of Ontario except the Thunder Bay area and one separate local agreement covering the Thunder Bay area. There are nine local collective agreements covering rodmen and five miscellaneous collective agreements.

Teamsters

One Canada-wide agreement covering pipelines and twelve various local collective agreements.

In addition to the foregoing collective agreements, there are five local collective agreements by various independent trade unions outside the building trades. There are also a number of multi-union agreements affecting various sectors of the construction industry.

From the above descriptions it is clear that there is substantial variation in the present bargaining patterns from trade to trade. Although a considerable number of collective agreements are province wide, the majority of bargaining situations in the province are local situations covering a specific trade.

CHAPTER 3

PROBLEMS ARISING OUT OF THE PRESENT BARGAINING STRUCTURE

The second of the terms of reference given this Inquiry Commission was to define the problems resulting from the present bargaining patterns in the construction industry. This is perhaps the most crucial of the tasks assigned this Inquiry. In a situation as complex as the collective bargaining in the construction industry it is of paramount importance to identify the proper problems; otherwise, we will likely deal with the wrong thing. Let me again emphasize that in this report we are dealing with bargaining for collective agreements and not the administration of such agreements. Further, we are dealing with the structures of bargaining and not with the specific contents of bargaining.

In the Background Paper a tentative formulation of the problem was set out to assist those making representations to the Commission. The problem was stated as follows:

"The problem we are confronted with is how the structure of collective bargaining in

the construction industry can be changed so that those who affect bargaining and are affected by it actually do the bargaining."

This is not to say that bargaining in the construction industry is not representative, but rather that it is affected, i.e. influenced, by other bargaining situations and each bargaining situation affects other situations.

The most common example of this situation occurs in those trades where bargaining takes place with a number of locals across the province. In any particular locality bargaining in that locality is often unable to respond to local conditions because of pressures from other localities. Thus, the size of a settlement in a neighbouring locality may be a more important pressure at the bargaining table than the fact that there is little construction activity in the locality where bargaining is taking place. The proper response in such a situation might be to stimulate construction activity by reducing construction costs. Thus, we are faced with a conundrum. Although the bargaining appears to be local, it has actually been determined by bargaining elsewhere.

Further, although a particular locality may think that during its collective bargaining it is only dealing with its own problems, there is frequently no way that it can prevent its bargaining from affecting

bargaining in other localities. These effects on neighbouring areas are not in themselves wrong. Indeed, no one ever bargains in isolation from others and it would be impossible to try to bargain in a vacuum. The problem arises when the present bargaining structures prevent those involved in collective bargaining from responding to the problems they are faced with in making a good collective agreement.

One of the major difficulties in examining collective bargaining in the construction industry is that people often think that structural problems affect only one side of the collective bargaining process. This is a mistake. Both sides, labour and management, are affected by this problem and those who formulate the problem as an "imbalance of power" or who lay the failure of the present system on one side or the other, address the wrong problem. If the collective bargaining system is responsive to both local and provincial conditions, then such responsiveness will be of benefit to both labour and management.

In the Background Paper two additional problems arising out of the current structure of bargaining were raised, namely, the problem of the "upsetting project" and the necessity for flexibility in the system. The problem raised by the upsetting project is particularly

important. In recent years, in this province, there have been an increased number of enormous projects that, because of their size and duration, have a profound effect on bargaining in their vicinity. Attempts are sometimes made to isolate such projects from the ordinary course of bargaining. Apart from the difficult question of whether this could ever really be accomplished, the general tendency has been to create more problems than are solved by such an approach. It would seem that a more fruitful direction in dealing with such projects would be to include them in the bargaining process so that the specific problems raised by such projects can be dealt with directly at the bargaining table.

The other problem, that is, the need to maintain flexibility in the system, is far more difficult. Although it is fashionable for people in the construction industry to complain about the extent of fragmentation in the industry, the solution to a new problem is frequently to create a new bargaining situation. In some cases this results in further fragmentation of the trades or in the development of new "sectors". Such solutions run the risk of creating parallel collective agreements to cover the same work and they increase the number of bargaining situations. On the other hand, it must be acknowledged that there are circumstances in which a separate bargaining situation can be justified. The

problem thus becomes one of developing suitable criteria by which such separate bargaining situations can be justified.

In its broadest sense the problem faced by this Inquiry Commission is to make collective bargaining in the construction industry more responsive to the needs of that industry. The present complex arrangements for collective bargaining prevent the present system from being responsive to the problems. The point of reducing the number of bargaining situations is basically to create a simpler context for collective bargaining so that those involved can get down to the business of making the best possible agreement for the side they represent rather than being misled by what has happened in some other bargaining situation.

It is important to understand that these problems arise from the structure of bargaining and not the content of bargaining. The suggestion is sometimes made that the parties to collective bargaining could improve the bargaining structures if they really tried. This is probably not so. An attempt by the parties to restructure bargaining would itself be an agreement, and what can be reached by agreement can also be destroyed by disagreement. From time to time attempts have been made to restructure bargaining in the construction industry.

Some such attempts last for a long time and are of great benefit to both sides. However, there are numerous examples of situations where in the course of bargaining a disagreement over the content of bargaining, e.g. wages, has led one party or the other to attack the structure of bargaining itself. In the absence of some form of protection the bargaining structure is usually destroyed.

CHAPTER 4

REPRESENTATIONS TO THE COMMISSION

The Inquiry Commission was very fortunate in having a constructive response from those involved in collective bargaining in the construction industry. Most representations from both sides were made having regard to the fact that there was another side to the construction industry and that the Inquiry Commission has to deal with both sides of the industry.

It is impossible to go into detail concerning all of the briefs and representations received by the Commission. Rather than deal with the briefs individually, I will deal with the most significant proposals or directions which were urged on the Commission.

(1) No Problem Arising from Present Bargaining Structures

There were some groups who suggested that the Inquiry Commission ought not to propose any changes in the bargaining structure because there are no problems. It was suggested that there are no problems because construction projects, in spite of frequent complaints,

always get finished. Further, the Commission was cautioned that changes usually create more problems than they solve.

I must confess to a certain sympathy to this position since I would certainly agree that one should not propose change simply for the sake of change. However, the argument that the present system is without problems is quite untenable. In the last round of bargaining there were instances of strikes which simply should not have occurred. Further, although there were some examples of highly successful bargaining, the real question arises as to whether the bargaining was too successful and that it led to subsequent cutbacks or slowdowns in construction activity. The last round of bargaining has left a significant number of problems for various upsetting projects throughout the province. If bargaining in the construction industry was adequately responsive, it would have addressed some of the problems which presently face the industry on these projects.

(2) Multi-Trade Bargaining

Some groups made representations to the Commission that a system of multi-trade bargaining should, at least, be partially introduced. This suggestion,

however, met with opposition from other groups. Multi-trade bargaining is frequently suggested as the ideal solution to problems in the construction industry and is really part of the broader recommendation that an industrial approach to construction trade unions is the best approach to labour relations in the construction industry.

The major difficulty with such a proposal is that it requires extensive structural changes for both labour and management in the construction industry. Both the employers and the trade unions are currently divided along various trade lines as a result of specialization in the construction industry. Multi-trade bargaining would not only require significant restructuring of trade unions, it would also require significant modification of various construction businesses. There is no practical way in which such moves can be proposed.

This type of proposal has another serious defect which is frequently ignored. Notwithstanding the wide range of types of employees covered by certain of the construction trades, the employees in that trade have a certain common set of goals or interests. The introduction of multi-trade bargaining would require larger and more varied groups to bargain together. This would invariably lead to internal conflicts within the group of

trade unions. Unless some method for resolving such internal conflicts can be developed, it is difficult to see how the multi-trade bargaining agency can adequately and fairly represent all its constituent members. On the employer's side it is even more complicated. Such multi-trade arrangements would mean that, in the course of bargaining, certain employers would lose all, or portions, of their present businesses depending on how the collective agreement operated. Again, it is difficult to see how such internal disputes on the employer's side could ever be resolved.

Thus, the Commission rejects completely such proposals as multi-trade bargaining. However, in rejecting moves towards multi-trade bargaining we must not lose sight of the fact that although a job site may have a multiplicity of trades at work at any given time, it is, after all, one job site. The trades must work together and recognize that they are interdependent on a job site. Thus, for instance, there is ample ground for developing better relationships between trades such as that developed by certain building trades councils which provide that members will not picket the construction site during a strike unless someone attempts to do the work of the striking employees.

(3) The Three Consensual Briefs

The Commission received three major briefs from labour, management and a group of purchasers of construction. The importance of these briefs cannot be overstated. Each brief is the result of a consensus of views within each of the respective constituencies. Because of the significance of these briefs I have included them as appendices to this report. Thus, the brief of the Provincial Building and Construction Trades Council of Ontario is Appendix "D"; the brief of the Construction Labour Relations Association of Ontario is Appendix "E", and the brief of the Owner Client Council of Ontario is Appendix "F". Each of these briefs represents a substantial amount of work on the part of those submitting them. However, the most important thing about these briefs is that although they contain some differences, they are in many respects compatible with each other.

All three briefs recommend the introduction of province-wide bargaining by trade for the construction industry. Both the CLRAO and the Owner Client brief request that such a change be the subject of legislation. The Building Trades brief does not specifically request legislation but does recognize the necessity of government action in implementing their request for province-wide bargaining by trade.

The brief by the Provincial Building Trades Council requests certain other changes in the construction industry. These will be dealt with at the end of this report. The briefs by CLRAO and the Owner Client Council recommend that some form of coordination be added to the proposed province-wide bargaining scheme. In addition, these two briefs suggest that all collective bargaining in the industrial and commercial sector of the industry should be part of the same process and propose a specific mechanism for dealing with upsetting projects.

Clearly these briefs received a broad range of support in the construction industry. However, it must be recognized that there were a few dissenting or partially dissenting voices amongst various groups in labour, management and purchasers. Nevertheless, there was a clear indication from the preponderance of people in the construction industry that province-wide bargaining by trade was the proper direction for the Inquiry to adopt in reducing the number of bargaining patterns in the construction industry.

(4) The Proposal

We have been requested to implement a system of province-wide bargaining by trade and to develop

coordinated bargaining and deal with large projects. We now turn to examine in some detail the nature of this request.

The first part of the request is to consolidate bargaining to province-wide bargaining. According to the proposal each trade would be a separate bargaining situation which would cover the whole province. As noted earlier, approximately half of the trades in construction currently bargain on a province-wide basis. It is important, however, to note that the term "trade" is not synonymous with trade union. Thus, for instance, while some trade unions bargain for only one trade, other trade unions bargain for a number of trades, often in different collective agreements. This raises an extremely difficult problem, namely, what constitutes a separate trade? In most cases the distinctions between trades are old and well established. However, the problem becomes difficult when one gets to certain specialty trades. In such cases the question arises as to whether we are dealing with a separate and distinct trade or simply with a particular job classification. The request to bargain by trade would indicate that collective agreements which involve only a particular occupation or classification of tradesmen should be dealt with under the collective agreement for that trade. On the other hand, if the employees covered by the separate agreement are not covered by the trade

agreement, this would tend to indicate the existence of a separate "trade" for these employees.

The main thrust of the proposal is that bargaining should be province wide. The proposal envisages the situation where for each trade the collective agreement for the whole province is settled at one bargaining table. In this regard the Commission received a great deal of assistance from the Provincial Conference of the Bricklayer's Union. This union has engaged in consolidated province-wide bargaining since 1972 and was most helpful in explaining the system used at bargaining and their experiences under such a system. The Bricklayer's system is a model system and more will be said about their method of province-wide bargaining later in the report.

For our present purposes the significant thing about the Bricklayer's experience has been the operating relationship between the various locals during the bargaining process. The Bricklayers have 25 local unions in the province, and obviously representatives of all 25 cannot be present at a bargaining table. However, the experience has been that during bargaining the problems of each local are kept in mind by members of the bargaining committee. These problems of each local are faced directly and are dealt with consciously during the bargaining process.

It can be seen that the move towards province-wide bargaining, therefore, solves one of the major problems arising out of the present system of bargaining. The situation in a particular area is dealt with in relation to other areas at the bargaining table. This is the proper context for dealing with such problems. This, of course, requires the bargaining agents to be more responsible. They will be faced with the problems of each particular local and will have to consciously attempt to resolve these problems. There is no "built in" excuse such as referring to an agreement by a neighbouring local as justification for a failure to respond to local conditions.

Similarly, on the employer's side, provincial bargaining should be more responsive to the basic problem than the present system of localized bargaining. Frequently, under localized bargaining, the pressures resulting from jobs that are in progress override the fact that the most important aspect of collective bargaining is that it sets the construction wage rates and costs for the next few years.

One disadvantage of province-wide bargaining is that when a work stoppage does occur it will be province wide. This, however, is offset by the fact that parties are not likely to take such a drastic step without careful consideration. Further, in such a consolidated

bargaining arrangement, each side will have more resources at its disposal during bargaining. This should substantially increase the quality of collective bargaining in the industry.

Another concern that is often expressed is that province-wide bargaining will lead to a single wage rate across the province. This is not necessarily the case. Those trades which experience a great deal of mobility across the province have already tended in this direction to protect and encourage such mobility. However, where there is a low level of mobility, responsible bargaining would create the opposite pressure, reflecting local conditions rather than province-wide rates.

The second part of the proposal deals with the introduction of coordination into construction industry bargaining. This was recommended by two of the three major briefs. The subject was not raised or discussed in the brief submitted by the Provincial Building Trades Council. However, it is of some importance to note that no opposition to coordination was registered by the Provincial Building Trades Council brief.

It is also important to recognize that coordination of bargaining is quite distinct from multi-trade bargaining. Multi-trade bargaining indicates that

a number of trades are bargaining together at one session of bargaining. Coordination, on the other hand, deals with the relationship between separate bargaining sessions. It must be recognized from the outset that whether we like it or not there are relationships between bargaining sessions. The proposal here is simply a matter of formalizing relationships which frequently exist on an informal basis during bargaining.

Coordination contains two different elements, namely, timing and defined relationships. With respect to timing, the introduction of coordination is neither a major nor a difficult problem. Approximately 70 percent of the construction agreements currently expire on the same day. This, in effect, sets the time for the start of bargaining in the construction industry. The timing aspect of coordination can, therefore, be effectively dealt with by making it a requirement that all collective agreements expire upon the same date. It is interesting to note that the Owner Client brief includes the recommendation that all collective agreements should start on the same date. This would, however, effectively introduce multi-trade bargaining since no trade would have a collective agreement until all of the trades had signed a collective agreement.

A substantial portion of the brief by CLRAO

consists of an explanation of the reasons why coordinated bargaining must be introduced. Indeed, Pages 129 to 140 in Appendix "E" form a catalogue of the frustrations felt by those attempting to bargain on behalf of employers in the construction industry. It is clear from the presentation of the CLRAO that, if province-wide bargaining is to respond to the needs of the construction industry as a whole, the relationship between bargaining agencies will have to be dealt with by this Commission.

This presents something of a problem. The Building Trades have not addressed this topic and have not requested a coordinating mechanism on the trade union's side. This is understandable in that the formalization of powers in this area may very well cause constitutional problems for the Building Trades unions. Further, it is probably the case that the present formal relationships between trades which currently exist are satisfactory. I think it is a mistake at this point to be misled by notions of symmetry. This is a situation where the problems that arise for the bargaining agents on one side do not arise for the bargaining agents on the other side. The fact that something needs to be done on one side and not on the other is not justification for concluding that nothing should be done in this area. It is clear that this is a significant problem area and steps must be taken to deal with the relationship between employer

bargaining agencies. However, if the unions feel that similar steps should be taken on the union side, then they should be given an opportunity to coordinate bargaining agencies in an appropriate manner.

The brief presented by the CLRAO makes two proposals in this area. First, that CLRAO should be established as a body directed by representatives from each of the associations engaging in province-wide bargaining. This group of directors would then develop various tactics for bargaining and would have the legislated right to vet proposed settlements in any of the trades. The CLRAO obtained a great deal of support from across the province for this concept. However, it was perhaps the most contentious proposal contained in their brief. Indeed, certain groups spoke strongly against this specific proposal. It is indeed an extensive power and there is, no doubt, some concern about how such power would be exercised. I am of the opinion that much of the concern about this request is due to a misunderstanding of both the request and the bargaining process. The power requested is not the power of a veto. What is requested is a power to pre-clear a proposed settlement. The dynamics of bargaining are such that the activities of such a coordinating body must be exercised prior to the offer being made to the other side. In fact, once the offer is made, the function of the coordinating body

has been effectively destroyed and a veto of such an offer will not remedy the harm done to the coordinating body. It is, however, difficult to see how a remedy can be developed to protect the coordinating association in such circumstances. Any conceivable remedy would involve making invalid the proposed settlement and that is tantamount to a veto of the settlement which is, as pointed out, ineffectual.

At the heart of any proposal to coordinate bargaining is the problem of protecting the coordinating agency from various attempts to undermine or destroy its function with respect to the separate bargaining agency being coordinated. What is needed is not simply a power to coordinate, but an effective remedy to ensure that those involved really keep their word. It is, therefore, imperative that an effective remedy be developed in this difficult area.

Rather than accept the proposal by CLRAO, that all the provincial bargaining associations be forced to accept CLRAO as a coordinating agency, the Inquiry Commission proposes to move in the direction of developing such a remedy. It is necessary to recognize under the legislation that the various province-wide bargaining agencies can execute a coordinating agreement with CLRAO. However, once such an agreement is made, the bargaining

agency should be required to abide by that agreement for a specific round of negotiations. Thus, should the bargaining agency attempt or purport to make a collective agreement without the prior approval of the coordinating agency, the legislation should provide that the bargaining agency loses its separate status and that only the coordinating agency, and only the coordinating agency, has the power to execute the provincial agreement.

It is only through the threat of such drastic consequences that those who agree to coordinate their bargaining can be prevented from breaking such an agreement when it is convenient to do so.

In summary, the proposal with respect to coordination so far is as follows:

Agreements should expire on a common date. The CLRAO should be established and recognized by law as the coordinating agency for bargaining by employer associations. This organization would have the right to participate in all bargaining. That agency must have some effective remedy over possible settlements by the individual employer bargaining agencies for each trade where they attempt to renege on a prior agreement to coordinate bargaining.

The briefs by both the CLRAO and the Owner Client Council also dealt extensively with what in the Background Paper were termed "upsetting projects". Both briefs take the position that these projects should not be isolated from construction bargaining by such devices as are currently used. Thus, they would not fall into a separate sector, such as the electrical power systems sector, nor would national agreements in the sense of being "no strike" agreements be allowed. This would effectively integrate such projects into construction bargaining which, if done on a province-wide basis, would mean that they would close down like any other project during a strike. To keep them isolated would effectively prevent bargaining from dealing directly with the problems raised by such projects. It is, therefore, crucial that they be included.

It is, however, important to recognize that the track record of collective bargaining in the construction industry has not been very good when it comes to dealing with such upsetting projects. This, no doubt, accounts for the concern expressed by EPSCA in the use of the electrical power systems sector to isolate very large projects from local bargaining. There are numerous examples where local bargaining has plain and simply discriminated against such projects. Terms in collective agreements which, really, only apply to large projects

and which unduly increase the cost of such projects as well as inhibit the effective operation of such large sites, are a prime example of the present system's inability to cope with the real problems of collective bargaining.

However, in a system of province-wide bargaining the justification for keeping such projects separate from bargaining disappears. This is precisely the context in which such projects must be viewed and, if province-wide bargaining is to accomplish the goal of resolving the problems of the industry through collective bargaining, then such projects must be included as a topic of bargaining. Indeed, the proposal by both CLRAO and the Owner Client Council recommends that such projects be the subject of a mandatory provision in the collective bargaining agreement. There would be a specific group within CLRAO charged with negotiating an upsetting project appendix to each of the province-wide agreements. Such an appendix would not be separate from the province-wide collective agreement but would aim for consistency across the trades in dealing with such matters as hours of work, travelling pay, and other concerns on projects which have a large work force.

CHAPTER 5

IMPLEMENTING THE PROPOSAL

We turn now to the most difficult problem faced by this Inquiry Commission. How can the present fragmented system of collective bargaining in the construction industry be restructured in accordance with the proposal made by labour and management to this Inquiry? In the briefs submitted to the Commission certain suggestions were made with respect to the bargaining agencies in the restructured system but the problem of restructuring bargaining itself was not addressed. This is not surprising since this problem is a difficult technical problem in labour relations law.

Earlier in this report we noted that there are severe limitations on how much a bargaining structure can be changed by agreement of the parties. There have been attempts to restructure bargaining by agreement, but too often these new structures are destroyed by disagreement. We must, therefore, focus on the structure of bargaining and not the content of collective bargaining. One of the major requirements of any attempt to implement the proposal is to provide protection for the proposed

new structure from the collective bargaining process.

By definition, a restructuring requires change. However, since the proposal to restructure bargaining has been requested by a broad cross-section of those involved on both sides of the industry, we can draw two conclusions from their representations. First, a complete restructuring of bargaining is not something that the parties can fully accomplish on their own. Secondly, they are prepared to make some accommodations in implementing change from the present structures to the proposed restructured system of bargaining.

From the point of view of the Inquiry Commission there is a further problem in that there is no available body of expert knowledge of how to change bargaining structures. This probably results from the fact that the origins of bargaining structures are not that well understood. In recent years there have been some attempts to change collective bargaining systems in the construction industry. In Canada, the Province of Quebec has changed its system of bargaining in the construction industry. In British Columbia, the recent Kinnaird Report proposes changes to the bargaining structures in that province. In addition, there was a recent unsuccessful legislative attempt in the United States to provide a mechanism for the future restructuring of collective bargaining in the

construction industry. For various reasons none of these attempts can be readily applied in Ontario, nor do they really provide much assistance in terms of implementing the proposal before this Inquiry Commission.

Without going into detail about these other attempts to restructure bargaining, it is sufficient to point out that the emphasis in these attempts to restructure bargaining has been directed at the creation of new bargaining agencies. In Quebec, British Columbia and in the proposed legislation in the United States, the concern expressed has been that of the creation by legislation of bargaining agencies capable of bargaining in the restructured system. This appears to be a drastic step which is quite uncharacteristic of labour relations legislation in North America generally. Indeed, in the brief presented to this Inquiry by the Provincial Building and Construction Trades Council of Ontario the following cautious statement appears:

"Each International union in Ontario should form, where more than one local union exists, a provincial council that represents all the local unions in its organization, and should be governed by an appropriate set of bylaws. Each provincial council should have full authority to bargain on behalf of all its construction members and be able to conclude agreements, subject to ratification by

the membership. The council would recommend, even though it is not in favour of compulsion, that each international union be urged to merge on a voluntary basis into a provincial council of sister local unions within a specified time."

(emphasis added)

The requirement by legislation compelling the formation of bargaining agencies would appear to be form of coercion not typically found in labour relations legislation.

With the greatest respect, I think the emphasis on the establishment of bargaining agencies misses the root of the problem. It is not the bargaining agencies and changes in these bargaining agencies that are the central problem but the establishment of a restructured system of collective bargaining. We know what the restructured system should be. The question is, how can the restructured system be established? Specifically, how can we establish a collective bargaining structure made up only of province-wide collective agreements for each trade?

To establish this proposed system we must return to an examination of the construction industry collective agreement. Earlier in this report we noted that these agreements have two important characteristics. First, they are multi-employer agreements and secondly, they are

standard agreements. Thus, the present structure of collective bargaining is made up of a large number of standard area collective agreements which operate for a defined group of employees and a defined group of employers. Further, we referred earlier to the recognized ethic of bargaining in the construction industry, that for these defined groups the standard area collective agreement is the only available collective agreement. In these terms the proposal placed before this Inquiry Commission becomes a request to change this large number of standard area collective agreements into a system where there is only one collective agreement covering the whole province for each of the construction trades.

It would thus seem that the proposal can be implemented by a very simple and not very radical device. What is required is legislative recognition of the way that collective agreements in construction currently operate; that is, the labour legislation relating to the construction industry should recognize that construction industry collective agreements currently operate as standard multi-employer agreements. Once this is recognized by law, it then becomes a matter of legislatively qualifying which types of agreements are allowable as valid collective agreements in construction. Thus, the only allowable agreements would be those which are province-wide and affecting a particular trade. In order

to restructure bargaining in the construction industry, we must first recognize the way the bargaining structure presently operates. However, once this is done, the restructuring of bargaining becomes quite simple.

We noted that labour relations in construction are quite different from labour relations in other industries. This was due in large part to the differences between the activities of construction trade unions and other trade unions. It has often been suggested that the labour legislation, as it currently exists, doesn't effectively apply to the construction industry. The point is that the legislation does not recognize the basic characteristics of a construction industry collective agreement. It is further suggested that only by recognizing these basic characteristics can bargaining in the construction industry be effectively restructured. Once it is recognized that all collective agreements in construction are multi-employer agreements, and that they are standard agreements over a defined group of employees and employers, we are then in a position to change the structure of bargaining.

It is important to note that the emphasis in this procedure is on establishing the appropriate bargaining structure and not on establishing the appropriate bargaining agencies. In order to conduct

collective bargaining under this proposed restructuring, parties would have to establish bargaining agencies capable of making the required agreement. This task is neither insurmountable nor, indeed, is there any reason why it should be a difficult requirement. Trade unions are capable of forming councils of trade unions which can bargain on behalf of a number of locals. Indeed, in this province, they have the example of the model system of provincial bargaining established by the Bricklayer's Provincial Conference. For the employers there are currently in existence a number of provincial associations for each of the various trades, and it is simply a matter of these associations assuming the collective bargaining responsibility currently exercised by local associations.

Thus, the proposal put to the Commission for a system of province-wide bargaining can be established by the introduction of legislation providing that the only valid enforceable collective agreement is a standard multi-employer agreement covering all the employees and employers in the province in a given trade. This would prevent attempts to break up the new bargaining structure by negotiating a separate agreement for a smaller area, or for part of the trade, or for any individual employer.

CHAPTER 6

SPECIFIC RECOMMENDATIONS

On the basis of the briefs presented to this Commission and discussion with those most directly involved in collective bargaining in the construction industry, it is clear that changes must be made in the collective bargaining structure and that both sides of the industry recognize that such changes are necessary. We have examined in some detail the proposals for change made to this Inquiry by a broad cross-section of the construction industry. The mechanism for implementing this proposal was developed in the previous chapter. We are now in a position to deal with the final task assigned this Inquiry Commission; that is, to propose methods for reducing and rationalizing the number of bargaining patterns in the construction industry.

(1) Scope of the Specific Recommendations

The recommendations made by this Inquiry Commission deal only with a very specific and well-defined segment of the overall construction industry.

This segment, however, is perhaps the most important segment of collective bargaining in the construction industry and, indeed, the results of collective bargaining in this segment of the industry indirectly affect all of the construction industry. Let me again emphasize that the subject matter we are concerned with is the making of collective agreements and not the day-to-day administration of such collective agreements. The scope of these recommendations covers the building trades unions in what was at one time referred to as building construction. Presently, that term is seldom used and has been replaced by terms such as the industrial, commercial and institutional sector of the construction industry, and the electrical power systems sector. These recommendations do not relate to non-union construction, nor do they relate to the various independent unions that operate in the construction industry, and they do not relate to other sectors or bargaining patterns outside the expanded industrial, commercial and institutional sector of the industry.

The various sectors of the construction industry raise a difficult problem. As we pointed out earlier in this report, there is a strong feeling in the industry that there is no real difference between the industrial, commercial and institutional sector and the electrical power systems sector. Such situations where there is no real difference only serve to fragment

the industry and create additional problems rather than solve problems. This Inquiry Commission realizes that those who participated in the activities of this Inquiry speak mainly for industrial, commercial and institutional construction and, therefore, these recommendations should not be construed to cover bargaining outside this segment of the industry. Nevertheless, serious consideration should be given to the discussion in the CLRAO brief concerning reduction in the number of sectors. Thus, residential construction and pipeline construction are established sectors of the construction industry. However, a difficult problem arises with respect to civil engineering projects which, under the present legislation, might fall within three different sectors presently set out in Section 106(e) of the Labour Relations Act.

One further matter concerning the scope of these recommendations must also be dealt with. A number of the building trades have collective agreements which cover maintenance work. Under these collective agreements members of building trades unions work for employers engaged in general maintenance and repair work, usually on industrial sites. Such operations are really service operations rather than construction operations. As service operations they are outside the construction industry and thus outside of the recommendations made by

this Commission. There is, however, a concern by those in the construction industry that construction work might be done under the guise of such a maintenance collective agreement. This is a valid concern, and where the work done under a maintenance agreement involves new construction or substantial reconstruction of premises, then that work is clearly within the construction industry and thus covered by the recommendations made in this report.

(2) General Recommendations Concerning Collective Bargaining in the Construction Industry

For collective bargaining falling within the segment of the industry defined in the previous section, the Labour Relations Act should be amended to recognize the basic characteristic of a construction industry collective agreement. Such an agreement must be a standard multi-employer collective agreement; that is, there must be only one collective agreement affecting a defined group of employees and employers in the construction industry. Collective agreements which are not multi-employer and which do not apply to the defined group of employees and employers, should be invalid. Further, it should be a prohibited activity under the Labour Relations Act to bargain for, or purport to enter into, an agreement which does not meet these requirements.

In addition to legal recognition of these characteristics of the construction industry collective agreement, the legislation should provide for the setting by regulation under the Labour Relations Act of the allowable collective agreements for building construction. These would be the only valid collective agreements which can be made covering employees and employers in the expanded industrial, commercial and institutional sector of the construction industry. By such regulation the allowable agreements would be required to cover a group of employees defined by a trade. The group of employers would be defined as the employers of such tradesmen, and the required geographic scope of the collective agreement would be the whole of the province of Ontario.

The effect of such a regulation would be to require those attempting to make collective agreements in the relevant section of the construction industry, agreements which are province wide and by trade. Attempts to destroy or alter the bargaining structure by making separate agreements for part of the province or part of the trade or with individual employers would be invalid and a prohibited activity under the Act.

- (3) Specific Recommendations Relating to the Consolidation of Bargaining

The Trade Union Side:

As noted earlier in this report the current bargaining structures on the trade union side vary considerably. For some trades one local has bargaining rights throughout the whole of the province; in other trades province-wide bargaining is done by groups of locals which may or may not be councils of trade unions. In other trades, where bargaining is local, the number of locals varies from a few to as many as twenty-one.

Clearly, for some trades the mechanism for province-wide bargaining already exists; for other trades, it will be necessary for the trade unions to develop agencies capable of negotiating the collective agreements allowable under the proposed legislation. It is, therefore, recommended that those trades which have a multiplicity of locals in the province, and which do not have a mechanism for province-wide bargaining, establish as soon as possible a council of trade unions, including all of the locals having jurisdiction over the particular trade in the province. In this regard, the council established by the Bricklayer's Provincial Conference should be used as a model for establishing such a council. It is recommended that for each trade in the construction industry the documents establishing the appropriate council be filed with the Ministry of Labour before the end of the present year.

To facilitate the establishment of these bargaining agencies the Inquiry Commission makes the following suggestions:

For each of the construction trades the International or parent trade union should take steps to establish a Provincial Council. This council should be composed of all of the local trade unions that have members in that trade, together with a representative of the International or parent trade unions. This would require an appropriate set of constitutional documents and bylaws. Further, the bylaws of each constituent local would have to be amended to vest the authority to bargain on behalf of the local in the Provincial Council. The International should also be involved as part of the council since one of the main functions of these parent bodies is to deal with matters concerning the relationship between locals. Further, since Internationals on occasion also make agreements, for that reason alone they should be involved in these Provincial Councils.

Since the primary function of these Provincial Councils will be collective bargaining, it is clear that the major thrust of its constitution and bylaws would be the procedures to be adopted by the council and the locals in collective bargaining. The first major problem is the development of an appropriate bargaining committee. In the case where the council involves only a few locals,

such a committee could be drawn up from representatives from each local. However, in situations where this would result in a bargaining committee that is too large and unwieldy, then the representatives from each local could constitute a steering committee from which a separate bargaining committee could be struck. The first function of the steering committee, or the bargaining committee, would be to study the demands of the various locals and develop a strategy for bargaining.

Once bargaining commences, negotiations would be completely in the hands of the bargaining committee. If a Memorandum of Agreement is arrived at by the bargaining committee, that memorandum should then be dealt with by the overall committee of the locals (i.e., either the steering committee or the bargaining committee). The steering committee should be capable of accepting the Memorandum of Agreement on the basis of a weighted vote of its members; that is, each constituent trade union would have a vote in proportion to its size. Acceptance by the steering committee of a Memorandum of Agreement would complete the bargaining process, i.e., it would constitute a collective agreement.

If the steering committee recommends rejection of the memorandum, or if the bargaining committee is unable to arrive at a Memorandum of Agreement, then the

decision whether or not to strike would be referred back to the membership of the various locals. The vote to strike would be conducted concurrently by all of the locals in the council and the decision would be based on the overall result of all members in the province. Alternatively, the vote could be conducted by a referendum vote conducted by the Provincial Council of all of the members of each local in the council.

In establishing such bargaining agencies it is important to keep in mind the fundamental problem that we are dealing with, namely, the necessity to improve the present system to make it more responsive to the needs of those involved. The purpose of these procedures is to clearly outline the responsibility of those involved in bargaining, and to ensure that they carry out their duties in a responsible manner. Since the main thrust of this proposal is to increase the size of the group involved in any collective bargaining situation, it is in the best interests of everyone that the procedures used fix such responsibility.

The Employer Side:

The present structures on the employer's side of collective bargaining in the construction industry

face a completely different set of problems from that faced on the union side. As pointed out earlier in this report, the unions have historically bargained with a group of employers in making area collective agreements rather than individual employers. The result is that there presently exists for every collective agreement a de facto bargaining agent for the employers concerned regardless of how informal that bargaining agency might be. In some instances these bargaining agencies are local; in other instances they are provincial in nature, and many of the local agencies have formal or informal ties with provincial agencies that are only indirectly involved in bargaining.

The present situation is further complicated by the existence of accreditation certificates under the Ontario Labour Relations Act. Some of these certificates are province wide in their coverage; however, the majority are local in scope. The accreditation has two principle effects on collective bargaining in the construction industry. First, it gives the accredited employer association the legal status of exclusive bargaining agent for all employers affected by the order whether or not they are members of the association. In this respect, the legislation simply focuses on a major characteristic of an area collective agreement, namely, that it is the standard agreement in that area, since

it makes it unlawful for the union to bargain for a different collective agreement with other employers. The second effect of the legislation follows as a direct consequence of the exclusive bargaining agency of the employers' association. The association is protected against attempts to break up orderly bargaining by the use of interim agreements by a local trade union.

The accreditation legislation has had two very important side effects in the construction industry. Primarily, it has focused attention on the relationship between trade unions and employers' associations as a normal part of orderly bargaining in the construction industry. In this regard, unions are less prone to regard associations as simply anti-union devices. Further, employer associations, in order to become effective bargaining agencies, have had to become more responsible in their collective bargaining with trade unions. The result has been an increased understanding on both sides of the processes of collective bargaining. The second indirect result of the legislation has been an increased realization that employer associations are a valuable vehicle in creating orderly collective bargaining in the construction industry. When the accreditation legislation was first proposed, the idea of an employers' association as an exclusive bargaining agent was considered by many to be a radical departure

in labour relations law. The basic concern was that there was no experience with such associations as exclusive bargaining agents. The only similar experience was where such exclusivity itself arose from collective bargaining and that frequently came to light as a violation of the anti-combines legislation. The experience with the accreditation provisions has, to some extent, set aside these previous concerns. The accredited associations have, by and large, conducted themselves as responsible bargaining agents and there seems to be no reason to conclude that the status of an exclusive bargaining agency will lead to an abuse of that power, particularly given the safeguards that exist in the legislation.

For most trades province-wide bargaining faces two specific problems on the employer's side. First, how can such province-wide bargaining agencies be formed, and secondly, how do the existing accreditation orders relate to such a proposal? As noted above, bargaining on behalf of employers who are not affected by accreditation orders, is done through de facto bargaining agents. Further, these agents have ties with provincial structures. It would, therefore, seem clear that a transfer of bargaining authority to the appropriate provincial structures would be the least disruptive way to proceed. Although some of these provincial associations

do not currently engage in bargaining, the pooling of local resources and the reconstitution of the provincial agency as a collective bargaining mechanism, is not that radical a step and could be done within the same time as that required to set up the related bargaining agency in the trade union side. It is, therefore, recommended that the various provincial employers' organizations file with the Ministry of Labour the appropriate documents establishing their ability to act as a bargaining agency for the group of employers affected by each of the various trades.

With respect to the existing accreditation orders, it is recommended that these should be repealed insofar as they relate to the sector of the industry concerned. Further, it will not be necessary for the accreditation provisions of the Labour Relations Act to apply to the province-wide employer bargaining agencies. The effect of recognizing the characteristics of the construction industry collective agreement would provide these province-wide associations with the protection currently given to an accredited employers' organization.

(4) Specific Recommendations Relating to the
Coordination of Bargaining

For the sector of the industry that we are

concerned with in these recommendations it is imperative that all bargaining be done during one time period. A substantial number of collective agreements affected by these recommendations will expire on April 30, 1977. It is recommended that all collective agreements affected by these recommendations be required to expire on the same day. Further, this day should be set as April 30. It is suggested that agreements be for two year periods commencing April 30, 1977.

In order to formalize the relationship between bargaining agencies, the following recommendations are made with respect to the bargaining agencies acting on behalf of employers. No recommendations have been made in relation to trade unions because none were requested. However, should the unions request some formalized coordinating procedures for the purpose of bargaining, consideration should be given to such a request.

It is recommended that the Construction Labour Relations Association of Ontario be recognized as the coordinating agency for bargaining agents acting on behalf of employers. In this regard the appropriate amendments to the constitution of that organization, as set out in their brief to this Commission, should be made. It is recommended that the governing body of that

organization be composed of members representing all of the province-wide bargaining agencies.

In order to facilitate efforts at coordination, it is recommended that during the course of bargaining the CLRAO be given a statutory right to be present during bargaining and, further, that a duty be imposed upon those negotiating province-wide agreements to notify CLRAO of all negotiating sessions.

It is recommended that statutory recognition be given to agreements between the various bargaining agencies and CLRAO requiring the bargaining agency to obtain the approval of the coordinating agency before communicating a proposal during bargaining. Such agreements would be operative for a particular round of bargaining. It is further recommended that an expeditious remedy for the violation of such an agreement be established in the Labour Relations Act. In this regard it is further recommended that the appropriate remedy for a violation of such an agreement be the replacement of the provincial bargaining agency directly by the CLRAO.

(5) Specific Recommendations Concerning Upsetting Projects

The recommendations made so far have been to

include upsetting projects within the framework of province-wide bargaining by trade. It is, however, necessary to ensure that the parties to collective bargaining will direct their efforts during bargaining to the specific problems faced by such projects. It is, therefore, recommended that each of the allowable collective agreements be required to include an appendix dealing specifically with such projects. Such appendices, however, must not constitute a separate and distinct collective agreement. It is further recommended that a specific group be established within CLRAO charged with responsibility for negotiating all of these upsetting project appendices. Since the objective of such appendices is the resolution of the problems created by the work force present on such upsetting projects, it is suggested that the building trades give serious consideration to establishing a group having a similar responsibility for the negotiation of such appendices.

CHAPTER 7

CONCLUSION

A number of briefs presented to the Inquiry Commission raised matters that have not been dealt with in this report. The brief by the Provincial Building and Construction Trades Council of Ontario, Appendix "D", outlines a number of areas of concern of this bargaining. These include the organization of employees, jurisdictional disputes, tradesmen qualifications, licencing of contractors and cyclical instability. In addition, the brief by the Toronto Building Trades Council, urged the Inquiry Commission to examine the relationship between s.123 of the Labour Relations Act and peaceful picketing. Other briefs suggested that union hiring halls, ratification votes, and the conduct of strikes should be part of the Inquiry.

Many of these requests reflect serious and extensive problems in labour relations in this industry. Although they are not dealt with in this report, I wish to make it clear that I recognize the concerns which gave rise to these requests.

To say that such matters are outside of the terms of reference of this Inquiry, is an accurate, but unsatisfactory answer to these requests. More to the point is the answer that it would be unfair to deal with these issues without giving others an opportunity to express their views on these other matters.

Nevertheless, there remains the significant statement in the Provincial Building and Trades Council brief:

".....you cannot separate any of the problems of this industry, they all have to be treated as one single problem, because if one is not working properly it can upset the remainder of the operation. Basically what we are trying to get across to you, Mr. Commissioner, you cannot just treat the symptom of collective bargaining separately and expect to achieve industrial peace in this industry without treating all the symptoms and attempting simultaneously to find solutions to the many other problems....."

In response to this comment I would suggest that the recommendations in this report constitute an important

first step towards the resolution of many of these other problems.

The recommendations in this report are an attempt to reflect the realities of collective bargaining in the construction industry in the applicable legislation. It is only on such a foundation that the solutions to these other problems can be constructed.

At various places in this report reference has been made to the spirit of cooperation that the Inquiry Commission received from those in the construction industry. Although this report recommends various legislative solutions, the importance of these solutions should not be over-estimated. What is infinitely more important is that those in the construction industry continue their cooperative efforts to resolve their problems.

APPENDIX "A"

BACKGROUND PAPER

CONCERNING SUBMISSIONS TO THE INDUSTRIAL INQUIRY
COMMISSION INTO BARGAINING PATTERNS IN THE CONSTRUCTION
INDUSTRY IN ONTARIO

With the issuance of this Background Paper the Industrial Inquiry Commission requests interested parties to submit briefs and make their representations to the Commission on the subject matter of its inquiry. In the hope of facilitating the making of such representations I have taken the liberty of setting out as many of the problems faced by this inquiry as I can presently foresee. I have also set out in some detail the kind of information I would appreciate receiving in any briefs or representations made to the Inquiry Commission.

There is no doubt that the present bargaining structures in the construction industry create many problems for those involved with that industry. Any resolution of these problems undoubtedly requires the cooperation and participation of those involved. In this Background Paper I have raised certain matters which must be resolved if the Inquiry Commission is to propose a practical solution to the problems raised by the present structure of collective bargaining in the construction industry. Further, I am inclined to think these problems will not disappear if they are simply ignored.

The Inquiry Commission will be accepting written briefs at any time during the period from October 15, 1975 to December 31, 1975. It is also my intention to conduct

informal hearings during this same period at which parties will be given an opportunity to present their representations to the Inquiry. These hearings will be held in Toronto and in various centres throughout the province.

Arrangements concerning hearings can be made by writing:

Construction Industry Inquiry Commission,
14th Floor, 400 University Avenue,
Toronto 2, Ontario.
Telephone: 965-3997

SCOPE OF THE INQUIRY

In December of 1974 I was appointed by the Minister of Labour to conduct an industrial inquiry commission pursuant to section 34 of the Ontario Labour Relations Act. The terms of reference of the Inquiry are:

- 1) to inquire into the existing bargaining areas and bargaining patterns in the construction industry,
- 2) to define the problems resulting from the present bargaining patterns in the construction industry,
- 3) to propose methods for reducing and rationalizing the number of bargaining patterns in the construction industry.

The establishment of an Inquiry Commission was the result of recommendations by the Construction Industry Review Panel to the Minister of Labour that a commission be set up to study "wider-area bargaining" in the construction industry in Ontario.

Since my appointment I have held a number of informal discussions with persons on both sides of labour-management relations in the construction industry. The consultations have been informative and I wish to express my thanks to those involved. The one theme that emerged from these meetings is a growing acceptance of the fact that the present structure of bargaining is creating serious problems. Further, there is an increasing realization that these problems can only be solved by substantial cooperation and adjustment by both sides.

The work of the Inquiry Commission has now reached the stage where I shall be holding public hearings to obtain the representations of interested parties. In order to assist those interested in making representations to the Commission and because of the rather complex terms of reference, I have decided to issue the present Background Paper.

From the outset it should be clear that the Inquiry Commission is dealing solely with the organized sector of the construction industry. It is clearly not the role of this Commission to question whether or not collective bargaining should continue in the construction industry. Nor is it within the scope of the Commission's Inquiry to deal with specific matters dealt with in construction industry collective bargaining such as hiring halls, jurisdictional disputes or subcontracting requirements.

The subject of this Inquiry is the patterns or structures of the bargaining process and how these structures affect bargaining. Thus we shall be dealing primarily with how collective agreements are made and how they operate in the construction industry.

THE PROBLEM STATED

Any attempt to state the basic problem faced by this inquiry probably starts with the observation that there are approximately three hundred standard area collective agreements affecting the construction industry in Ontario. Even after extensive research, one can only state the approximate number of standard area agreements. Further, since these collective agreements are area agreements they apply to a number of employers, in fact, any employer who does the work covered by that collective agreement in unionized construction is bound by such a collective agreement.

As a result of previous collective bargaining a substantial number of these three hundred agreements had been coordinated to expire on April 30th of 1975. Thus in a very short span of time approximately two hundred and fifty collective agreements came up for re-negotiation.

The problem that arises when such a multiplicity of bargaining occurs was succinctly stated by Mr. George Meany, President of the A.F.L. - C.I.O., when he commented recently that "each local negotiates as if there was no other". The problem is that there are other locals and that bargaining is not done in a vacuum. Each settlement affects other settlements and is itself affected by other settlements.

For some time now, the effect of one collective bargaining situation on another bargaining situation has been referred to as either leap-frogging or whip-sawing, depending whether it was between areas or between trades.

The real problem is not that whip-sawing and

leap-frogging occur or that such tools are available to one side of the collective bargaining process and not the other. The real problem is that frequently on both sides of the bargaining table the persons who most affect the bargaining are not present. The problem we are confronted with is how the structure of collective bargaining in the construction industry can be changed so that those who affect bargaining and are affected by it actually do the bargaining.

SOME BASIC ELEMENTS OF THE PRESENT BARGAINING STRUCTURES

In order to avoid confusion and hopefully to facilitate discussion it is desirable at this point to set out certain of the basic elements (or ingredients) of the present bargaining structures in construction. The present situation is one that has evolved over a period since the turn of the century and a look at these origins still form the quickest insight into the present situation. Originally, the building trade unions consisted of local trade unions which were collections of tradesmen having certain skills and experience and prepared to do certain types of work in the vicinity of the local trade union. Collective agreements set the wages, hours and other terms of employment for tradesmen working out of the particular local. The agreement applied to any employer who hired workmen and consequently was negotiated by the trade union with the local employers. Frequently these employers used the vehicle of a local builder's exchange to conduct negotiations with various trade unions.

Over the years the situation has become more sophisticated and more complex, nevertheless, this description still characterizes much of the bargaining

in the construction industry in Ontario.

The typical construction industry collective agreement of today sets the wages, working conditions and terms of employment for a particular trade, which may or may not be all of the employees of any particular employer. That collective agreement operates over a geographic area. In some instances this geographic area is spelled out in the collective agreement, in other instances a reference is made to the geographic jurisdiction of the particular trade union. These references to trade and geographic area determine the bargaining unit set out in the collective agreement i.e. they define the group of employees for whom the trade union is the exclusive bargaining agent under the Ontario Labour Relations Act.

It is important to note, however, that the Labour Relations Act in Ontario provides for either certification of a trade union (in which case the Ontario Labour Relations Board sets the appropriate bargaining unit) or for voluntary recognition (in which case the parties are usually at liberty to define the bargaining unit that they consider appropriate). In practice certain trade unions obtain bargaining rights by voluntary recognition while others are certified by the Ontario Labour Relations Board.

In construction industry certification cases, the O.L.R.B. has had two basic policies relating to bargaining units. In such cases, because of the craft structure of the construction industry, the Board has, with few exceptions, described bargaining units in terms of the construction trades. However, the Board has developed a number of fixed geographic areas. These areas are set out in a map distributed by the O.L.R.B. and they are the geographic areas which the Board will use in its

description of the appropriate bargaining unit. In constructing the set of standard geographic areas, the O.L.R.B. has tried to reflect the bargaining patterns in particular localities. Unfortunately, in many cases this is less than a loose approximation of the collective agreements in a particular area. In fact, most of the standard area collective agreements in the Ontario construction industry do not use the geographic areas in the O.L.R.B.'s map of geographic areas.

There is a great deal of variation in the types of institutions that are party to area collective agreements. On the union side the party to the agreement may be a local trade union, a council of trade unions or the parent trade union. On the employer side the signatory may be a number of individual contractors, an association of contractors or an accredited employers' organization.

The Ontario Labour Relations Act provides for the accreditation of employer associations. Under this legislation the employer organization that is able to demonstrate its support of a weighted majority of employers becomes the exclusive bargaining agent of a defined group of employers. Thus, the accredited association becomes the only group with which the trade union can lawfully make a collective agreement. Individual agreements are specifically prohibited by law. It was noted above that a bargaining unit in a collective agreement defines a group of employees for whom the trade union is the exclusive bargaining agent. In the accreditation proceedings the group of employers for whom the association becomes the exclusive bargaining agent is referred to as the unit of employers. The legislation requires that the Board determine an appropriate geographic area and an appropriate sector or sectors in determining the unit of employers. Since the legislation only deals with employers who are "unionized" it is only these employers who are required

to bargain with the trade union that are affected by the accreditation legislation, in effect those who are party to a standard area collective agreement. In most cases the O.L.R.B. has found the area in the standard area collective agreement as the appropriate geographic area for accreditation.

The O.L.R.B. is also required in determining the appropriate unit of employers to determine the appropriate sector of the construction industry. The term sector is defined in the Labour Relations Act as including a number of specified sectors. The basic concept from which the idea of sector is derived is of importance here. Over the years, in collective bargaining in the construction industry, certain conditions relating to the work affected by a collective agreement gave rise to special terms in the collective agreement. These became separate collective agreements in the overall bargaining structure. The significance of these separate agreements is that they are an exception to the basic characteristics of a standard area collective agreement. In order to understand the operation of collective agreements in the construction industry, it is essential to recognize the ethic accepted by both trade unions, employers and employer associations, that for the type of work covered by a particular construction industry collective agreement, every employer who does that work does it under that standard area agreement.

POSSIBLE DIRECTIONS IN RE-STRUCTURING BARGAINING

As noted above, the multiplicity of bargaining situations leads to the problem that those who affect bargaining or who are affected by bargaining are frequently not present at the bargaining table. The problem faced by this Commission is thus to find ways of

reducing the total number of bargaining situations.

Logically, it would appear that this can be done by moving in one or other or some combination of two general directions. The present number of bargaining units can be reduced i.e. the present groups are consolidated into fewer but larger groups. On the other hand, the bargaining situations themselves could be co-ordinated so that the net result is fewer bargaining situations. Each of these directions raises certain difficult problems.

When one attempts to consolidate small bargaining groups into larger groups, the major difficulty encountered is a conflict with the idea that the trade union is the exclusive bargaining agent for the employees in the bargaining unit. A similar problem occurs with associations where, under the accreditation provisions, the association becomes the exclusive bargaining agent. The problem becomes one of determining how the individual bargaining agencies, under the present structure, relate to the new consolidated bargaining agency.

Presently, the Ontario Labour Relations Act recognizes the existence of councils of trade unions and further provides for, under certain conditions, a council of trade unions to be certified as bargaining agent for a unit of employees of an employer.

On the other hand, there appears to be no mechanism under the Labour Relations Act whereby a group of trade unions can join together and be certified as a single bargaining agency for the employers with whom they presently bargain. Presently it would appear that a certified council of trade unions would have to be certified for each employer with which it deals.

In order for a council of trade unions to be

certified as an exclusive bargaining agent, the legislation requires that "the Board shall satisfy itself that each of the trade unions that is a constituent union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent" (Section 9 (1)). That provision of the Labour Relations Act has been used on a number of occasions. However, it is not adequate to deal with attempts to consolidate the present bargaining structures in the construction industry. Further, the main consequences that flow from being a certified council of trade unions relate to how bargaining is done in the event of the dissolution of a certified council of trade unions. Clearly, if the solution to our present problem lies in the direction of consolidation of present bargaining structures, then a more sophisticated concept of consolidated bargaining agency than that of a council of trade unions will have to be developed. However, on the employer side there is not even the equivalent of the council of trade unions under the present legislation. It is clear that any attempt to develop a more sophisticated concept in this area will need to deal with the way that the component parts relate to each other and to the consolidated agency in some detail.

If we examine the other possible direction, namely that of co-ordinating the bargaining situations, we are faced with the problem of determining how the various groups that are co-ordinated relate to each other and what rules will govern the co-ordinated bargaining.

It would appear that, regardless of which direction a solution is sought, the crucial issue becomes one of how the present multiplicity of parties in the bargaining process are to relate to each other and to the proposed re-structured bargaining process. It is important to remember that the present inquiry is concerned

principally with bargaining in the construction industry i.e. the bargaining by which the area collective agreement is reached. This bargaining occurs only at very specific times and is usually of very short duration. However, this matter is quite distinct from the administration of that collective agreement during the period that it is in force.

In addition to the key problems outlined above, I should like to raise two other very important problems. These are problems which I feel are best discussed when one is attempting to re-structure bargaining although they relate to conditions after the present situation is re-structured. They are, however, quite capable of destroying any proposed re-structuring.

The first matter relates to the necessity to maintain the flexibility to change bargaining patterns. In certain circumstances a separate and new collective agreement is warranted, indeed this is frequently the way that the construction industry has reacted to major developments and changes in the industry. However, if such special arrangements can be made too easily any attempt at re-structuring will not last very long. The question thus arises as to when and under what conditions should changes in the proposed bargaining patterns be allowed.

The other problem refers to what might be called "the upsetting project" i.e. the extremely large project that uses a work force that is much larger than the size of the work force in its vicinity and which takes a long time to construct and thus for a long time represents a huge capital expenditure which is not in use. There have been numerous instances of such projects and the effect they have on collective bargaining in the

construction industry simply cannot be ignored. If any attempt is made to re-structure bargaining in this province, it is necessary for the stability of any proposed re-structure to relate such projects to the proposed bargaining structure.

There have been various attempts to deal with such projects (e.g. free ride agreements, claiming the work is in a different sector, and various pre-job arrangements) but no solution to date appears very satisfactory. The economic forces generated by such large projects cannot be removed. It would therefore seem clear that some sort of relationship between these projects and the ordinary course of bargaining must be developed if the proposed re-structuring of bargaining is to have any stability.

REPRESENTATIONS AND BRIEFS

In addition to the foregoing problems, it would be appreciated if those presenting briefs and making representations to the inquiry commission would include in those representations as much of the following information as is feasible:-

1) Information About Present Bargaining Situations

Many of the construction industry area agreements are on file at the Research Branch in the Ministry of Labour. That information has been the subject of certain studies. However, in order to ensure that the present situation is viewed as accurately as possible, briefs should include:

- a) the parties to the collective agreement
- b) the area of the collective agreement
- c) the type of work affected by the agreement

- d) the number of employees affected by the agreement
- e) the number of employers affected by the agreement
- f) information about how bargaining is carried out

2) Problems Encountered in Bargaining

In this regard I would appreciate a discussion of any problems which arose in the recent round of bargaining or any serious problems which arose in previous sessions. Emphasis should be given to such matters as breakdowns in bargaining, situations where the bargaining structures changed and the effects of bargaining in other areas.

- 3) What Affects Bargaining In The Construction Industry
- 4) What Proposals They Have For Changing The Present Situation

APPENDIX "B"

PUBLIC MEETINGS HELD BY THE CONSTRUCTION INDUSTRY
INQUIRY COMMISSION INTO BARGAINING PATTERNS IN THE
CONSTRUCTION INDUSTRY IN ONTARIO

January 5, 1976

London, Ontario - Howard Johnson Inn

January 6, 1976

Sarnia, Ontario - Canterbury Inn

January 7, 1976

Windsor, Ontario - National Travellers Motel

January 8, 1976

Kitchener, Ontario - Conestogo Inn

January 12, 1976

Hamilton, Ontario - Royal Connaught Hotel

January 14, 1976

Kingston, Ontario - Highway 401 Inn

January 15, 1976

Ottawa, Ontario - Lester B. Pearson Building

January 19, 1976

Oshawa, Ontario - Holiday Inn

January 20, 1976

Sudbury, Ontario - Senator Hotel

January 21, 1976

Sault Ste. Marie, Ontario - Holiday Inn

January 23, 1976

Thunder Bay, Ontario - North Shore Arms

January 26, 1976

St. Catharines, Ontario - Parkway Inn

January 27, 28, 29 and 30, 1976

Toronto, Ontario - Hotel Toronto

NOTICE OF PUBLIC MEETINGS HELD BY THE CONSTRUCTION
INDUSTRY INQUIRY COMMISSION INTO BARGAINING PATTERNS IN
THE CONSTRUCTION INDUSTRY IN ONTARIO

Notice of these hearings was given through
advertisements in the following publications:

<u>City/Publication</u>	<u>Date</u>
Toronto/Daily Commercial News (trade paper)	December 10, 15, 29 January 5
Windsor/Star	December 22
Sarnia/Observer	December 22
London/Free Press	December 22
Kitchener-Waterloo/Record	December 22
Hamilton/Spectator	January 5
Kingston/Whig-Standard	January 5
Ottawa/Citizen	January 5
Ottawa/Journal	January 5
Ottawa/Le Droit	January 5
Oshawa/Times	January 12
Sudbury/Star	January 12
Sault Ste. Marie/Daily Star	January 12
Thunder Bay/Times-News/ Chronicle-Journal	January 12
St. Catharines/Standard	January 19
Toronto/Globe & Mail	January 19

APPENDIX "C"

LIST OF THOSE WHO PRESENTED BRIEFS
OR MADE REPRESENTATIONS TO THE
CONSTRUCTION INDUSTRY INQUIRY
COMMISSION

Boilermaker Contractors Associations

Building and Construction Trades Department AFL-CIO

Canadian Automatic Sprinkler Association

Catalytic Enterprises Limited (Industrial Maintenance)

Christian Labour Association of Canada

Consolidated Maintenance Services Limited

Construction Labour Relations Association of Ontario

Electrical Contractors Association - Quinte-St. Lawrence

Electrical Power Systems Construction Association

General Contractors Section - Grand Valley Construction
Association

General Contractors Section - Hamilton area

General Contractors Section of the Toronto Construction
Association

Hamilton and area Building Trades - Materials

Industrial Contractors Association of Canada

International Brotherhood of Boilermakers, Iron Shipbuilders,
Blacksmiths, Forgers and Helpers

International Union of Operating Engineers - Local 793

London and District Building and Construction Trades
Council

Masonry Industry Employers Council of Ontario

Mechanical Contractors Association - Kingston

Mechanical Contractors Association - Ontario

Ontario General Contractors Association

Ontario Provincial Conference - Affiliated with the
International Union of Bricklayers and Allied Craftsmen

Ontario Provincial Council, United Brotherhood of
Carpenters and Joiners of America

Ontario Provincial Council - International Brotherhood
of Electrical Workers

Ontario Sheet Metal and Air Handling Group

Owner Client Council of Ontario

Owner Client Council of Sarnia

Provincial Building and Construction Trades Council
of Ontario

Provincial Council of Labourers - Materials

Refrigeration Workers of Ontario - Local 787 (United
Association of Journeymen and Apprentices of the
Plumbing and Pipe Fitting Industry of the United
States and Canada)

Sarnia area letters - Cope (Sarnia) Limited
- Sandercock Construction Limited
- F.A. Stonehouse & Son Limited

Sheet Metal Workers International Association
Local 38

Sprinkler Fitters Division - Local 787 (United
Association of Journeymen and Apprentices of the
Plumbing and Pipe Fitting Industry of the United
States and Canada)

Terrazzo, Tile & Marble Guild of Ontario, Inc.

Toronto Building and Construction Trades Council

United Brotherhood of Carpenters & Joiners of America -
Local 38

APPENDIX "D"

BRIEF SUBMITTED BY

THE PROVINCIAL BUILDING

AND

CONSTRUCTION TRADES COUNCIL

OF

ONTARIO

To discuss Collective Bargaining in the Construction Industry intelligently one must look at the whole industry from a practitioners point of view rather than studies done previously by outsiders such as academics and others. The reason for this is that this industry is completely different from any other industry and has its own particular set of complex problems which are not even understood by other organizations and unions in the Labour Movement who are outside of the Construction Industry.

Many writers in the field have attempted to define construction, most of them through the employment of wide, sweeping descriptions. The definition "the creation of any structure or the alteration of the natural topography of the ground, plus the maintenance and repair of such products" is as good a definition, but also as limited as any. The phrase, on-site building, is serviceable. It, however, also fails to convey the complexity of, and differentiation within the industry.

Road, office tower, hydro dam and shopping center construction always come to mind when considering construction, but in-plant repair, a new coat of paint in the upstairs bedroom, and relatively obscure businesses such as water well drilling are all aspects of the industry. Nearly every example of each type of construction tends to be a virtually unique product as even a sector like paved highway construction is quite different from area to area in the Province, because of variations in the topography. This diversity prevents the devising of meaningful general rules of Labour Relations and to a great extent preclude a "broad brush" approach to the industry's problems. It is this industry's unique characteristics that are the basis of many of the inadequacies in the current legislation.

Construction in Ontario accounts for a sizeable portion of the Province's economic activity. It has ranged over the six billion dollar figure in the last couple years and is increasing each year. This figure includes both new construction, which consists of new work put in place and additions and major improvements made to an asset in order to prolong life expectancy, and repair construction. New construction roughly represents eighty-five percent of all construction in this Province. Repair construction, namely minor changes to existing assets that maintain operating efficiency, accounts for the remaining fifteen percent. Most of the work is done by construction contractors, but a portion of construction is undertaken by companies, non-profit organizations and individuals that are not part of the industry proper. Commonly referred to as own-account or in-plant construction.

The operating structure of the industry indicates much of construction's uniqueness. Within the industry there are owners, entrepreneurs, the general contractors, management companies, bargaining agents, architectural, engineering and other professional service groups, sub-contractors, several craft unions and roughly 200,000 employees, with a large portion of these being unorganized. In terms of organization and industry operation, two key relationships exist in the industry, that of the general contractor with the sub-contractor and that of the contractor with the union hiring hall. The phenomenon of both relationships is largely unique to construction and results in a decentralization of management responsibility. The sub-contractor usually manages the work of a particular trade and then assumes responsibility for the initial work planning, materials, equipment and other capital requirements as well as the direction of the employees of a particular project. The hiring halls of the craft unions offer the stability to organized employees that cannot, in most cases, be offered by the contractor because of his varying degrees of activity over-time, and subsequent

fluctuating labour requirements as larger projects are started and completed. Construction then differs from most manufacturing, commercial and service industries in that there is relatively little centralization of management and no common senior administrative group that is responsible for planning, internal co-ordination or the resolution of employee conflict. In effect, we the craft unions must perform the personnel functions such as screening, recruiting, and administering benefits of management.

Construction is commonly broken down into the categories of residential, industrial, commercial building, institutional and engineering construction. Each sector has methods of operation common to itself and the labour relations concerns of each sector also vary. Under the Ontario Labour Relations Act, the sectors are further defined as follows: "sector" means a division of the construction industry as determined by work characteristics and include the industrial, commercial and institutional sector, the residential sector, the sewers and watermains sector, the residential sector, the heavy engineering sector, the pipeline sector and the electrical power systems sector.

The residential sector is characterized by small contractors working on relatively small scale projects of short duration interspersed by a few large contractors with large projects who in the majority of instances sub let most of the work to so called dependent sub-contractors who are in essence, employees of the large contractor. Competition for work is keen, in some cases it is severe, as a great number of contractors operate in this sector. In some sections of the industry, the degree of competition has many of the aspects of the "cutthroat" competition that gave impetus to initial minimum wage legislation. Tradesman's qualifications tend to be lower, with the result that a large majority of the employees cannot readily transfer to the non-residential construction sectors. Union organizing

is usually most difficult because the dependent sub-contractor aspect of the operations. Estimates of the size of the non-union labour force are hazardous because of the fluctuating size of the residential construction labour force, but it is suspected that some seventy five percent of the employees in this sector are unorganized. We have some organized contractors operating in certain cities. Given the competitive aspects of the sector, the degree of union organization has important labour relations ramifications as competitive advantage in the sector may be gained at the expense of wages and working conditions of employees who cannot easily move out of the sector, who are unorganized and who do not possess the qualifications standards of some unions. Labour relations problems in the sector relate to the development and enforcement of labour standards and the organization of employees and treating these dependent sub contractors in law as they really are "employees".

The non-resident sectors of the industry are largely unionized. Non-union contractors operate mostly on the fringes of this part of construction and are almost exclusively on small jobs. The sectors are characterized by relatively large general contractors who are able to command the necessary large amounts of capital. The state where a few large firms effectively control the industry in many of the specialized construction fields. A few large general contractors commanding the necessary capital, expertise and access to highly skilled manpower, for example, operate in the fields of pulp mill, elevator, oil refinery, chemical plant and steel mill construction. Such firms usually operate in several provinces, and sometimes in other countries and are often based in the United States. Sub-contractors are an important part of the operations of non-residential construction. Many sub-contractors operate in highly specialized areas and some are very large companies in themselves, but competition between sub-contractors in most fields is strong and in some areas, fierce as in the residential

sector. As a result of the structure of the industry, the large general contractors possess a great deal of economic and political power over the sub-contractors through the assignment of contracts and has the power to influence the overall bargaining patterns.

The major labour relations concerns of non-residential construction largely relate to collective bargaining and work assignment, as these labour relations problems have a high profile as they often can involve the threat of a strike or lockout. It is in the non-residential construction that the national and inter-provincial agreements are found, primarily covering mechanical trades.

A dominant and perplexing characteristic of the construction industry is its cyclical nature. The demand for construction services varies greatly from region to region according to the general income fluctuations in the region's and the provincial economy. While most every industry in the Province is affected by changes in sales and profits in those industries which purchase its product or services, the magnitude of the changes in the demand for construction because of these economic ups and downs in each region are far more significant. Cyclical instability partially explains why in 1974, cries of a manpower shortage of skilled tradesmen were heard from many employers and why currently we have as much as 25 percent of their membership unable to find work within their trade and region.

Labour relations implications of these cyclical swings are important in terms of both collective bargaining and manpower planning. Pronounced downturns in construction activity create great hardships for some construction employees and many of those laid off are forced to seek work in other industries. Construction is characterized by some excellent training programs and other industries are more than receptive to acquiring the highly skilled construction

worker at a loss to the construction industry. Higher hourly wages are one of the methods through which the industry retains its skilled employees.

The cyclical boom and bust patterns of the industry are thought by economists to be partially avoidable. Several studies of this problem have been conducted by various authors in North America, the most recent of which has been the Economic Council of Canada study, "Towards More Stable Growth In Construction". Current thinking suggests that government expenditures for construction services could be made in such a way as to smooth out the cyclical swings to a considerable degree. At the present time the evidence suggests that government expenditures for construction in Canada have actually aggravated the cyclical problem. Hope exists for this component of expenditure to be used as a contra-cyclical device, to be spent when demand for construction by the private sector is not buoyant and its demand for construction is low. It is expected that at least the public sector's demand should grow evenly and steadily rather than in the same erratic fashion that is exhibited by the private industrial and commercial sector.

The point serves to illustrate not only the complexity of one aspect of the construction industry labour relations problems, but also demonstrates how far removed sources of current problems and possible long term solutions can be from the bargaining table.

Economic downturns on the employer's side are perceived as affecting his ability to pay, but in boom periods its not unusual for some contractors to look for short term gains and pay more than the negotiated wage, often paying foreman's wages for tradesmen's work.

The question arises how many employees should be trained and towards what level of economic activity the

construction labour force should be geared. Obviously any attempt to train and maintain a qualified labour force by the government and the craft unions for sake of boom periods is unwise as it only results in added unemployment, inappropriately trained workers, employee disillusionment and wasted training dollars. At the same time, an inadequate labour force geared only to manpower requirements existing in recession periods is also inappropriate. It can occur through improper manpower planning procedures and a failure to meet realistic training requirements. Unnecessary manpower shortages of significant magnitude or excessive pools of skilled tradesmen produce, besides a negative impact on the economy generally, but additional strains at the bargaining table. Too often training program decisions are made, usually by government officials, without adequate knowledge and care being given to possible labour relations repercussions.

The question of supply of manpower to jobs through the hiring halls has come under criticism in recent months. It should be mentioned that the recent studies such as Goldenberg and Crispo and the Economic Council reports have favoured the hiring hall concept. Most observations and conclusions have been similar to those of the Economic Council of Canada.

"In the absence of continuous job security, seniority and other protections usually conceded by employers, the hiring hall system generally serves the interests of union craftsmen quite well. As for employers, hiring halls have proved helpful in that they represent an easy, inexpensive means of recruiting labour, with some assurance that the occupational skills of the tradesmen they receive will match the particular requirements of the jobs at hand."

Criticisms of hiring halls in Canada concerns a possible tipping of the bargaining balance of power towards

the unions because of the potential for artificial restrictions on the supply of skilled labour and because of the potential for employer and employee discrimination in assignment to a job site. The evidence that we have does not bear out that hiring halls are an unnecessarily restrictive influence on the labour market. In fact, they function as the key stabilizing element to the whole industry's labour market and a tradesman's employment in particular. Far from presenting a training bottleneck, they are an excellent workable mechanism for the counter balancing over-zealous manpower officials eager to flood a market that often has already begun a downturn. Hiring halls maintain incentives to train because they guarantee sound employment prospects for apprentices. The pressures on the hiring halls from employers, unemployed union members and the bargaining table are such that as good a balance between supply and demand as can be hoped is achieved.

The argument that hiring halls are a source of employment discrimination needs to be viewed in the light of alternatives. To date, superior alternatives are not in existence. Criticism must also be tempered with the knowledge that no matter what system of employee assignment is used

"and regardless of who administers the selection and hiring - the unions, management, a manpower intermediary or some tripartite combination of the three-some men will be favoured because of their skills, seniority, family or their situations, just as some employers get more contracts than others."

Economic Council of Canada, "Towards More Stable Growth In Construction" - Page 78.

Construction also has a considerable amount of seasonal fluctuations of economic activity and employment. Study of employment patterns reveals that construction starts to slow down by the end of October and reaches its slowest periods in December, January, February and March and then starts to slowly pick up by April and reaches its peak in

July and August. These seasonal factors are possibly becoming less pronounced through such innovations as equipment that can be used in cold weather, better planning for work and heated construction sites. As it now stands, however, the industry's seasonality is a disruptive labour relations factor. Frequent and/or long layoffs may well have an important psychological aspect that is brought to the bargaining table. Employees who experience regular periods of unemployment are possibly far less horrified by the thought of a further work interruption because of a strike. Construction workers could well be less perturbed by thought of a strike or lockout because it in some ways resembles just another layoff. A parallel argument can be applied to employees who have frequently been effected by strike or lockout and a similar set of arguments probably hold for employers. To an extent, this reasoning belittles the hardships and trauma that virtually always accompany an employee on strike, such is not often explained by the press, but layoff and strike frequency is a contributor to a bolder psychology of negotiations on labour's behalf.

Information as to the extent of cyclical instability and seasonal variations in industry activity is scattered and limited. A review was made of data from some major craft union health and welfare plans suggest in the basic trades, employees average 1,000 to 1,250 hours of work per year. This translates into roughly between 6.5 and 8.0 months of work. The averages for mechanical trades fall within the 1,350 - 1,500 hours range out of a potential of 1,875 regular work hours per year. This is a far cry from how the media has attempted to misinform the general public wherein they take the package wage of the trade and multiply it by 40 hours a week, and then by 52 weeks per year and then come up with some fantastic annual wage that each construction worker is supposed to be earning. In fact at times the media even throw in a couple of hours overtime in each week to really bamboozle the general public about the annual earnings of

the construction worker. This only serves to confuse the public and add to the already considerable misinformation. In terms of total annual income, many construction workers earn less than comparably trained manufacturing, service and municipal tradesmen, who receive on the average a slightly smaller hourly wage package but many more hours of work per week per year.

Suggestion that the trade unions are responsible for inflation in this Province, it must be realized that the suggestions are far from being based on irrefutable fact and are largely political. Wildgen in his study "Economic Aspect: Work, Income and Costs Stabilization" Construction Labour Relations 1968, stated he could see

"No conclusive statistical evidence to either support or refute the view that substantial increases in construction costs and prices reflect the cost-push effects of unions."

and he further concluded that,

"It is not possible on the basis of the available statistics to ascertain the relative extent to which construction costs and prices have been influenced by demand-pull on the one hand and cost-push on the other. Analysis of the available statistics suggests, however, that demand-pull is predominant influence; costs and prices have tended to increase markedly with vigorously rising demand only to stabilize or decline during slack periods."

Cost-push inflation is, however, thought to be existent in the industry but not to be as serious as demand-pull. One should not readily assume that higher hourly construction wages are inflationary. Professor Gordon Bertram studied this particular question as part of the Prime Minister of Canada's Task Force on Labour Relations (Wood's Task Force). In reviewing construction wage changes for Canadian construction workers over the period 1958 to 1968,

he concluded that the 5.7% rate of wage increase apparent over the decade,

"is almost entirely 'explained' by the sum of the rates of productivity growth and price advances which come to an annual average total rate of 5.33%".

Craft specialization is key to the efficiency of the industry and efficiency in the industry has been traditionally gained through the development of the skills of the construction worker and increased productivity acquired with technological innovation. While no suggestion is wisely made that wage increase should be limited to keeping pace with productivity and consumer price movements, such measures are a further indication of whether there is any imbalance of labour-management power.

Certainly one of the most unique features of the industry is its project nature. When construction is required on a site, the skills, machinery and other operating inputs, together with required materials, move to the job site. When the project is completed, whether it be a highway or a structure of some sort, the productive capacity of the industry moves on to the next job. This is most unlike the case of an office, mill or plant.

This lack of a permanent job site has many ramifications. It means construction work forces must be mobile. For the individual it either can mean no settled family life, weeks of family separation or the need to be continuously moving one's family. The organization of non-union workers is made very difficult and the problems of the disappearing bargaining unit are well known and have been documented.

Of course one of the keys to the solution of the problem of the disappearing bargaining unit is speedy certifications. The Labour Relations Board has attempted to improve its procedures on handling certification cases. But

since the Labour Relations Act was written primarily for the stable bargaining units as they exist in offices and plants, the existing legislation is not adequate to cover the construction industry problem of the disappearing bargaining unit. The craft unions, have attempted to employ their own remedy to the problem which involves the organization of the employers rather than the construction employees themselves. The all too typical method now utilized in the employee organization of the industry consists of exerting economic pressure on the unorganized employer when he appears on a job site where most work is being done by organized employers. In some form or another, most construction unions have some protection for a union member's right to refuse to work alongside unorganized employees. Since the unorganized employer's presence restricts other on-site work from continuing, the unorganized employer usually faces pressure from the general developer and/or other organized contractors, to become unionized. This method has been substantially jeopardized by the latest changes in the Labour Relations Act and the Labour Relations Board new powers and procedures in issuing cease and desist orders faster than any court in the land issued injunctions in labour disputes. So definitely something has to be done to make it easier for unions in the construction industry to organize. Later in this brief we will make a recommendation on the way that this injustice can be corrected.

The requirement of construction labour force mobility puts great pressures on the construction workers family life, but it also is the reason why he is so attached to his craft and his union. It is the only constant factor in many construction tradesmen's employment life. He cannot expect to work always in a particular geographical area of the Province, and he cannot expect to remain with one particular contractor. Because of the nature of the industry, we find that relative to most other industries, contractors feel no particular obligation towards their tradesmen or vice

versa. Again the hiring hall is a stabilizing influence.

The uniqueness of virtually each construction product make the achievement of industry efficiency through mass production in most instances impossible. Replacing this type of saving are economics gained through contractor/employee mobility and craft specialization. Construction is a labour intensive industry, almost a handicraft industry, and the skills and training of its tradesmen are critical.

Due to a lack of available statistical information and cooperation in obtaining sound data from administrative records, very serious problems remain in estimating the organized construction labour force. Seasonal and cyclical fluctuations also serve to make any attempts at an assessment of the size of the labour force difficult. It is believed, however, that the organized construction work force currently⁷ stands in the 90,000 to 100,000 range.

We must commend the Ministry of Labour for the continuation of the program to get the necessary data for manpower requirements and proper forecasting of construction activity as outlined in the Barnard Report for Reducing Cyclical Unemployment in the Construction Industry and the Feasibility of Forecasting. It is an absolute necessity to have accurate data on the above two aspects of the Construction Industry.

Because so many contractors, craft unions and so many trades can be involved with a construction project, there is a high degree of interdependence on the job site. Work usually begins with the basic trades who break ground, operate heavy equipment and build the forms for the pouring of concrete. The progression of trades continues with the mud trades, the mechanical trades and the finishing trades. While trade identity is strong, this interdependence requires considerable inter-trade co-ordination for reasons

of efficiency and also because the economic action of one trade can hurt another.

An indication of the extent of countervailing power in employer-employee relations can be gained from a perusal of strikes and lockout data. The following table details the number of man-days of work delayed in Ontario and British Columbia since 1966.

<u>YEAR</u>	<u>ONTARIO</u>	<u>BRITISH COLUMBIA</u>
1966	112,140	44,190
1967	739,170	2,343
1968	157,250	3,256
1969	1,360,350	32,557
1970	140,030	925,000
1971	205,080	9,554
1972	192,150	1,102,978
1973	155,960	17,864
1974	76,180	496,318

A review of the man-days of work delayed over the period of 1966 to 1974 does not seem to indicate some sort of bargaining imbalance in Ontario, especially when you consider the British Columbia figures from 1970 to 1974 as compared to our figures for the same period even though our organized construction work force is well over twice the size of the work force in British Columbia and Ontario wage settlements were comparable to the wage settlements in British Columbia. Possibly the primary reason for our better record in man days lost is because our whole industry is not accredited into a single bargaining unit as it is in British Columbia wherein the whole industry can be shut down by a strike or lockout.

Another problem compounding everything at the bargaining table is the fact that the state which was once thought by most economists to be impossible, now actually exists; simultaneous high unemployment and a high rate of

consumer price inflation.

To really get the feeling about man-days of work delayed in judging what has commonly been expressed by academics and the press as bargaining imbalance in Ontario, one must also take into consideration and compare with man-days of work lost to this industry due to its many dangers that result in accidents.

Using the same time period as in the above table, 1966 through 1974. The injuries in this industry have ranged from a little over 20,000 in 1966 gradually going down to just over 18,000 in 1968 and slowly rising again to just over 19,000 in 1974. On the average over this nine year period we were losing annually 700,000 man-days of work.

Adding up the totals for comparison from 1966 to 1974 in man-days lost.

From injuries	6,300,000
From Strikes & Lockouts	<u>3,138,310</u>
Difference	3,161,690

There were just over twice as many man-days lost in this whole period due to injuries. So really who is trying to kid who, about this so called balance of bargaining power. In the case of the Unions its a straight case of bad publicity against any union which is forced to back up its demands through economic action.

One final point must be made, for all the construction industry's uniqueness and problems, in terms of employee working freedom and satisfaction, the industry is remarkably advanced. In this era of 'new', 'progressive' ideas like workers control, upward communication, participative management and job enrichment, the old craft unionism of construction outshines most every one of the

modern factories and offices introducing such so-called employee developing management ideas. The construction employee's work is generally less repetitive and the organized worker is under less pressure to stay in a job which he finds unsatisfying or distasteful. The hiring hall is always there and while the next job may be sometime in coming, the employment prospect will arrive sooner or later and without the door-to-door drudgery of searching for a job opening.

Most of the more unique aspects of the construction industry have been discussed or at least mentioned above. Possibly, if given space and time, some more of the construction industry's uniqueness could be separated, classified and discussed, in your case Mr. Commissioner that will not be necessary because in your position as Vice Chairman of the Construction Industry Review Panel you have become very familiar with the many aspects of this industry because most have been mentioned and discussed in meetings of the Panel in the past three years.

The one very important aspect we all found out is, that you cannot separate any of the problems of this industry, they all have to be treated as one single problem, because if one is not working properly it can upset the remainder of the operation. Basically what we are trying to get across to you, Mr. Commissioner, you cannot just treat the symptom of collective bargaining separately and expect to achieve industrial peace in this industry without treating all the symptoms and attempting simultaneously to find solutions to the many other problems we understand have been discussed at Panel meetings such as work assignment and inter-union jurisdictional disputes, organization of non-union employees and employers, finding measures to ensure the qualifications of construction tradesmen, enforcement of tradesmen qualifications, licencing of contractors as to their competence to engage in construction activities,

finding solutions to cyclical and seasonal fluctuations,
securing proper data on manpower requirements and accurately
forecasting construction activity.

Given the uniqueness of the industry and the labour relations problems that arise with few of the major ones being mentioned in the above paragraph, one must ask himself do better labour relations remain by making attempts to have the industry's collective bargaining structure more like that of a manufacturing, commercial or government establishment? Or does much of the solution lie in developing new legislative guidelines and procedures, specifically for construction and accepting its distinctness as given and largely unchangeable? Obviously, the actual solution is a little of each, but the latter solution of dealing with the industry as it now exists has the most merit and immediate hope for better labour relations. That is why as members of the Construction Industry Review Panel we proposed a package that would deal with most of these problems in the industry. That is why we state in this brief that we have to proceed on all of the proposals in the package at the same time and in that way only will we be able to set the stage for the possible lasting industrial peace in this construction industry.

Too often, legislators, academic opportunists and, unfortunately, people directly involved with the industry, seized on one or two unique characteristics which they become convinced are the source and cause of the problem. To change this one aspect is expected to be the key to unlocking exemplary labour relations. However, seldom, if ever, is this the case. Just as it is poor theory that does not approximate and closely predict reality, it is an inferior labour law that overlooks or ignores the specific vested interests and traditional methods of operation that in many cases hold together the whole fragile operating structure of an industry. A suggested fault of labour

legislation in the fifties and early sixties was that it was basically designed with the industrial type union and the factory or office work places in mind. For these reasons, it has been recognized in this Province to a limited degree that the construction industry demands distinct and special legislative provisions that adequately respond to the needs of this unique industry.

Now to deal with the specific problems and the recommendations we propose as solutions to same:

ITEM 1 Recommendations to assist in development of an improved bargaining structure in the construction industry.

Because members of the craft unions often belong to the same union for all of their working life in construction. In many cases, the union fosters the member from the apprenticeship level through to journeyman status and may represent him as a lead-hand, foreman or supervisor. In the construction industry, the trade union operates the hiring hall, administers for the employees the health and welfare plans and pension plan and provides security for the employee-members by a form of seniority through the hiring hall. The craft unions represent and retain control of their members to a much greater extent than is typical for plant or office workers in an industrial-type union. As a result, employees represented by the building trades unions tend to display much more loyalty to their union than their employer, especially in comparison to the case of industrial unions.

With few exceptions, the by-laws and constitutions of the craft unions require that the business agent be a journeyman-tradesman with full knowledge of the industry in which he operates. The union business agent, shop stewards and committee work closely with the employer trade associations

and generally have maintained good working relationships over many years. This has somewhat been scarred by the improper interjection of outside people into this relationship such as O.F.C.A. a couple of years back and now C.L.R.A.

Nearly all of the building trades unions also represent some employees who work in operations other than construction. The unions represent members in manufacturing, service industries, transportation and other segments of the work force in Ontario. This allows union leaders to gain a broader perspective of labour conditions in the Province, although the relationships they have with the construction industry usually remains as their primary preoccupation.

All unions in the construction industry are affiliated to a Building Trades Council either at the local or provincial level. The Provincial Building and Construction Trades Council of Ontario is governed by an executive Board composed of a construction representative from each affiliated trade and we also employ a full time staff. The Council meets regularly in executive sessions and annually as a full convention in various places in the Province to deal with the various problems affecting building tradesmen.

Many attempts have been made by legislators across Canada to improve the bargaining structure of the construction industry. Often based on the proposals of academics, some suggestions have proven to be worthwhile while others have been disastrous. Probably the fundamental point that should be remembered is that because of the construction industry's complexity, one will not find a jig-saw puzzle in which every piece will eventually fit neatly into place. Careful thought and the confidence of all parties is required before any worthwhile change will occur. Such requires patience but unfortunately this will undoubtedly take much more time to become effective than the

legislators or the general public might wish.

Because in construction, individual workers become identified with a particular group possessing similar skills. With this in mind, a bargaining structure should be designed to allow for the continuation of trade identity, but should also consider the fact that although the trades need each other, they can hurt each other through economics action. This Council believes that a sound approach would be to weld the existing craft local unions to-gether in a manner that would allow them to retain their local autonomy over the work of their local and craft and yet delegate the function of co-ordinated bargaining to a centralized craft council representing that craft and those tradesmen.

This should be the first move toward the consolidation of bargaining in the building trades. Each International union in Ontario should form, where more than one local union exists, a provincial council that represents all the local unions in its organization, and should be governed by an appropriate set of by-laws. Each provincial council should have full authority to bargain on behalf of all its construction members and be able to conclude agreements, subject to ratification by the membership. The council would, recommend, even though it is not in favour of compulsion, that each international union be urged to merge on a voluntary basis into a provincial council of sister local unions within a specified time.

To compliment the above recommendation the same should take place on the employer's side of the industry. This is essential in order that each craft union be fully able to iron out trade differences with management most knowledgeable about the trade, namely the trade associations. Failure to do so may only add significant strains to collective bargaining and create dissatisfaction on the job sites. In

some cases the end result is a strike or a wobble. This is undoubtedly a point in the construction industry where the accredited unit simply becomes too large. Too many issues need to be brought to the bargaining table and only a portion can be dealt with in a particular round of negotiations.

This Council would recommend legislation that would allow for the employer's organization to obtain bargaining rights for all unionized construction contractors on a trade basis. In the opinion of the Council, trade association accreditation would overcome many of the disadvantages of the current bargaining structure and would allow for more harmonious labour relations in the industry. This belief is reinforced because of the high calibre of people involved in the affairs of the various trade associations and through evidence of extremely good working relationships on the trade level in such matters as training of tradesmen, safety and joint administration of Health and Welfare, Pension and Vacation Pay Plans. Such a system would be similar to the "realistic" form of accreditation advanced by Harry Arthurs and John Crispo, but would be strictly by trade. The scope of each accredited bargaining unit would be province-wide. Accreditation would be granted upon proof of a majority in the trade of the sector named in the application.

The goal set is that of the achievement of actual countervailing power on the trade level with each craft union bargaining with its respective trade association.

ITEM 2 Recommendations to deal with the problems of the organization of employees in the construction industry.

The affiliates of this Council, basic demand over the years has been that we should have the right to engage

in informational and organizational picketing so that organized labour can fully inform the public and the unorganized workers that substandard construction pay rates and working conditions are being paid by an unorganized employer.

The National Labour Relations Board in the United States has made some decisions on this subject as it pertains to Section 8 (b) and related sections of the federal Taft/Hartley Act. These interpretations have generally upheld the rights of organized labour to picket job sites where working conditions are inferior to the standard collective agreement in an area.

As stated before instead of making any headway with the Ontario Labour legislation in the above direction, it has gone the other way and has become more restrictive.

Indeed, the main problem facing craft unions in organization of non-union construction employers is largely simple, it's the solution that is so complex. Only a short time remains for organization as the employees will soon have completed the project and be gone. Unlike most unions which face the stable organization unit of an office, plant or store, the construction craft union confronts a moving target. This initial disadvantage make employee organization in Ontario Construction industry a very expensive proposition.

The speedy processing by the Labour Relations Board of applications for certification in the Construction industry is essential to overcome organizational problems of the disappearing bargaining unit have helped. The second method of attacking the problem is to allow for organizational picketing in the construction industry and in this regards this Council recommends the immediate repeal of Section 123 of the Labour Relations Act, the third

method of attacking the problem would be that only the employees and the union should be considered or be present at any certification proceeding by the Labour Relations Board and where an employer is found guilty of attempts to interfere with organization or to prevent certification of a union, the Board should give automatic certification to the workers without a vote.

ITEM 3 The effects of National Agreements on the Collective Bargaining in the Province of Ontario.

The Council finds that the national contractor to be not intrinsically different from the independent contractors. Over the last few decades the track record of national agreement on man-days lost is quite good. The 1972 elevator dispute was the first dispute in forty-six years of the Elevator Constructor's agreement.

I will use Mr. James McCambly's statement on behalf of the Advisory Board for the Building Trades in Canada to make the point.

"There are the Boilermakers agreement, Elevator Constructors, the Sprinklers' agreement, Pneumatic control agreement, the Pipeline agreement with four trades, Engineers, Labourers, Teamsters and United Association, Maintenance agreement, Quality control agreement and Stress Relieving agreement. These agreements have a remarkably good record of being concluded with a minimum of strikes and lockouts."

Specialty national agreements reflect the inter-provincial in some cases international, aspects of the highly specified areas of construction. National agreements promote the necessary degree of mobility of employees in this field. The details of this statement can be better explained by the craft union involved.

Concern rests in some quarters that national contractors often disrupt local labour relations by offering superior fringe benefits to employees. Our experience with national contractors does not bear out this concern.

This Council would recommend that national contractors be required to pick-up the standard agreements of the area, except in the case of specialty national agreements. This is the procedure they now follow and we see no reason to have same changed.

ITEM 4 Find solutions to the problems of inter-union jurisdictional disputes.

While the incidence of work stoppages attributed to jurisdictional disputes is no greater than two or three percent of the overall man-days lost per year in the construction industry, they never the less get much attention because of their newsworthiness as inter-union conflict. These disputes often create bottlenecks in the industrial relations of the construction industry. Recommendations have been made by this Council in its package proposal to the Construction Industry Review Panel on a system to settle these disputes.

We know that the present system in Ontario where we have parties running to two Boards to settle jurisdictional i.e. the Impartial Jurisdictional Disputes Board in Washington, D.C. and the Ontario Labour Relations Board here has not solved anything but created confusion and distrust of parties. The solution to this problem must be found along the lines that we had recommended to the Panel and the Panel should press forward in its deliberations to find a solution to this problem, to coincide with the time when this Commission will be ready to issue its report.

We have the additional problem of inter-union

jurisdictional disputes and the government should be prepared to take positive steps to eliminate, as far as possible, the intrusion of another work force into the on-site construction which is the natural base of operations for the building trade union. It would seem pointless by either Government, customers of construction, or the tax-payers to spend millions of dollars on apprenticeship and trade-upgrading programs developing a highly skilled construction force of contractors and employees, and then allow them to sit idly unemployed, while the same customers of construction create their own work force and undercut the construction industry proper for questionable short-term economic gains.

ITEM 5 The necessity of taking measures to ensure the
Qualifications of Construction Trade Employees.

With few exceptions, the members of the construction community, namely unions and management, agree that a significant step towards improving the general standard of workmanship in the industry would be achieved through a standard of qualification for all tradesmen. This Council in its brief on the Dymond Task Force Report went one step further by recommending that the qualifications of all tradesmen in Construction Industry be compulsory. We also recommended in that brief that the enforcement of the qualifications be transferred from the Industrial Training Branch of the Ministry of Colleges and Universities to the Ministry of Labour where it can be performed properly.

ITEM 6 The licencing of contractors as to their competence
to engage in construction activity.

As in the case of the principal of trade qualifications for employees, it can be readily agreed that all contractors should be qualified to perform work in such

a vital industry. However, what does qualified mean?

Judge Harry Waisberg has written in his report of the Royal Commission on Certain Sectors of the Building Industry, Part 1 1974 at Pages 324 and 325 as follows:

Licensing of contractors

It may be that the answer to abuses in corporate identity, bid depositories, and union interference lies in the licensing of building contractors and subcontractors. The Goldenberg Report in 1962 also recommended that contractors be licensed. Exemption could be provided for small jobs.

Licensing has many advantages. Although the Labour Relations Act does provide some discipline for employers, it does not provide for the special circumstances which are found in the construction industry.

1/ The process of certification and accreditation would be greatly assisted by licensing. The licensing bureau would have readily available the names of the employers. The licencees could be required to make regular returns indicating the names and classifications of the employees. This would provide an up-to-date list for use on applications for certification and accreditation.

2/ Licensing would give positive identification to contractors. This would, to some extent, combat the evils which arise from lack of corporate identity. The licensee would be identified regardless of the name he used for any project.

3/ Bid depositories might be added as an adjunct to licensing. The licensing bureau could establish procedures and regulations. The contractors, however, must be included as parties to any plan, as it could not succeed without their entire support.

4/ Licensing could be used to impose some standards of qualification in the construction industry. These standards need not be unreasonably high in the first instance, but failure to meet the requirements and default in performance could be dealt with. The unsettled conditions and keen competition of the construction industry create a climate which requires some such degree of regulation. The standards might also be applied to small firms, in which the owner and members of his family are employed, which undertake contracts on a piecework basis and observe very few of the regulations on working conditions prevalent in the industry.

5/ Safety standards and working conditions could also be safeguarded through licensing.

6/ Many provincial and federal agencies would benefit from the information available through licensing. To assist in stabilizing the construction industry, a great deal of precise information is necessary. It is often stated for example, that workers in this industry do not enjoy full time employment; it would be useful to have statistics, so that comparisons could be made with other industries. Statistics should be available on construction and manpower forecasts, and the license bureau could assist in gathering the information. This would supplement the information now available through the Department of Labour.

7/ Employers based outside of Ontario would be identified by licensing when operating within the province. We found that this information was lacking in the Ottawa-Hull region, which seriously prejudiced the employees.

8/ Licensing protects the public. One wonders why, in a society concerned about protecting the consumer where many different kinds of agents and dealers are licensed, builders should not be similarly treated.

Licensing is not new to the construction industry. California enacted the Contractors State Licence Law in 1929 and similar legislation is now in force in other states of the United States of America. In Canada, the province of Alberta is now considering a scheme of licensing and one already exists in the City of Calgary.

It may be that licensing would provide the discipline required for employers in the construction industry. I would, however, suggest a careful approach to the problem. A more detailed study is necessary before the matter proceeds.

WAISBERG

The list of advantages and recommendations by Judge Waisberg deserve careful consideration and his approach is in general support by this Council.

A further discussion on this subject matter took place in Sudbury and was reported in The Sudbury Star on Wednesday, November 19th, 1975 under title "Suggest Builders, Contractors Come Under Provincial Licence".

Builders and contractors should be licenced by the province, a Toronto architect said Tuesday.

Valim Milic told a group of about 150 people involved in the area of building that he is "very much for the licensing of contractors".

The day long seminar, entitled "Municipal Building Inspection in the Seventies" was sponsored by the region and attracted participants from as far away as North Bay, Timmins and Sault Ste. Marie.

While the majority of those in the audience were building inspectors who work for municipalities, there were others representing the design professions, such as engineers and architects, as well as contractors and developers.

It was the inter-action among these four groups of people, as they relate to the construction of homes and other buildings, which led Mr. Milic to his conclusions.

Some Restricted.

Two of the four groups, architects and engineers as well as building inspectors, are bound by laws and regulations. The other two groups the owners of buildings and contractors are not, he said.

"In each of these roles we have parts to play and in the end, are responsible to the public." he explained.

He advised that there is a shift in where the responsibility in the provision of safe and secure buildings lies.

While agreeing with an earlier speaker that a municipal building inspector, "Can't be everywhere at all times" the onus on insuring a safe building is being unfairly placed at the door of the structural and design people.

Whether the contractors follows the instructions of an engineer or architect in the construction of a building seemed to matter less now, he said.

If there were licensing, the reputable builders would be able to weed out those whose approach is less than honourable in their functions, Mr. Milic said.

Deal With Owner

When working to insure that acceptable building standards are maintained, he advised the municipalities to "deal with the owner" of the project and the builder is the only one who can be forced to do things properly as requested by building regulations, he said.

The concept of licensing builders got some measure of support later in the conference from Graham Adams, of the uniform standards branch of the Ministry of Consumer and Commercial Relations.

He thought such "registering" might be part of a province wide, warranty insurance scheme on the purchase of new homes.

Protection Plan

He said that such a scheme to protect new home owners, ought to apply to all builders in the province. The builders would be registered to ensure they had the financial and technical background to support their involvement in the warrant program.

A further statement on licensing was published in the Daily Commercial News on December 9, 1975 entitled "Licensing Ousts Adventurers in Quebec - Harvey."

Quebec (CP) - The new system of licensing for building contractors in Quebec should reduce the number of "adventurers in the industry and assure legitimate contractors a place in the market," Labour Minister Gerald Harvey said Saturday.

Speaking at a meeting of the Quebec Region Home-Builders Association, Harvey said he deplore the influx of fly-by-night operators who set themselves up as builders, to the detriment of consumers and of the "real professionals" in the industry.

"It is inconceivable that your industry takes in 6,000 new operators a year and sees 4,000 of them drop out - out of a total of about 20,000 operators - as has been the case in recent years," he told the association.

"This rejection of undesirable operators will assure consumers of finding serious businessmen. In addition, the real professionals will obtain a fair share of the market without having to compete with adventurers."

He warned that unmerited profits, non-guaranteed work and "lemons" will no longer be tolerated by society and he said he intended to be very demanding of the homebuilders' association.

Harvey said the association must seek the protection of the consumer and not the protection of the contractors.

Control over building contractors is to be exercised under a new construction industry board set up last June following the report of the Cliche commission into construction industry abuses.

Harvey told the audience contractors have a transitional period in which to prepare their firms to qualify under the Board's rules. Firms must demonstrate financial solvency and competence within the next year before being licensed.

This Council wholeheartedly supports the statements made above.

ITEM 7 Finding solutions to cyclical and seasonal fluctuations and the securing of proper data on manpower requirements and accurately forecasting construction activity.

All of the above go hand in hand and they have a lot of bearing on the whole labour relations aspect of this whole industry from manpower training to collective bargaining and we can only reiterate again that the Ministry of Labour should be commended for accepting the recommendations of the Construction Industry Review Panel and going ahead with the study initiated by the Barnard Report on Reducing Cyclical Unemployment in the Construction Industry and the Feasibility of Forecasting.

All of which is being respectfully submitted for your assistance during your inquiry.

Provincial Building & Construction

Trades Council of Ontario

15 GERVAIS DRIVE, SUITE 604, DON MILLS, ONT. (416) 449-4830

January 13, 1976.

Mr. Donald Franks,
Industrial Inquiry Commission,
Department of Labour,
400 University Avenue,
Toronto, Ontario.



Dear Sir:

Please find enclosed four copies of Brief on Wider Area Bargaining and other matters pertinent to the whole bargaining structure.

This Brief was prepared after I had visited various Building Trades Councils in the Province and received a general consensus of opinion about its contents.

We are prepared to appear before your Commission to make the presentation and we are available on January 27, 28, 29 and 30th, 1976 when we understand you will be holding public hearings in Toronto.

Please let us know when you want us to appear on any one of the days mentioned and we will be there.

With best wishes, I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Henry Kobryn".

HENRY KOBRYN
SECRETARY-TREASURER

HK/bh
Encl.

Provincial Building & Construction

Trades Council of Ontario

15 GÉRAVIS DRIVE, SUITE 604, DON MILLS, ONT. (416) 449-4830

January 30th, 1976

Mr. Donald Franks,
Industrial Inquiry Commission,
Department of Labour,
400 University Avenue,
Toronto, Ontario.

Dear Sir:

Further to my letter of January 13, 1976 wherein I state that our Brief was prepared after I visited various Building Trades Councils in the Province and received a general consensus of opinion about its contents.

The following meetings were held:

London Bldg. & Const. Trades Council	Mon. Nov. 10/75
Windsor " " " "	Tues. Nov. 11/75
St. Catharines " " "	
& Hamilton " " (In Hamilton)	Wed. Nov. 12/75
Ottawa " " "	Thurs. Nov. 13/75
& Kingston " " (In Ottawa)	
St. Catharines " " 2nd meeting	Wed. Nov. 19/75
& Hamilton " " (In Hamilton)	
Sudbury " " "	Thurs. Nov. 20/75
& Sault Ste. Marie " (In Sudbury)	
Kitchener " " "	Mon. Nov. 24/75
Toronto " " "	Fri. Nov. 28/75
Toronto " " (2nd meeting)	Fri. Dec. 5/75

Trusting this information clarifies our letter of January 13th, 1976 in addition all these meetings were well attended.

With best wishes, I remain,

Sincerely yours,

Henry Kobryn
HENRY KOBRYN
SEC-TREAS.

HK/bh

APPENDIX "E"

BRIEF SUBMITTED BY

THE CONSTRUCTION

LABOUR RELATIONS ASSOCIATION

OF ONTARIO

INTRODUCTION

The Construction Labour Relations Association of Ontario (CLRAO) was formed in May, 1972, to represent management in construction industry negotiations across the Province of Ontario.

CLRAO's membership consists of approximately 1,200 contractors, representing about half of Ontario's unionized construction industry in the industrial, commercial and institutional sector.

CLRAO acts as a central co-ordinating organization, providing information on bargaining and labour relations trends, advice on industrial relations and grievance and arbitration procedures.

In the past three years, CLRAO has acted mainly as a co-ordinator of bargaining, entering into active negotiations only at the request of certain management groups.

CLRAO's stated purpose is to work with -- not against -- the building trades' unions toward greater stability in the industry and a sound economic future for all parties concerned.

PROBLEMS ENCOUNTERED UNDER THE CURRENT BARGAINING STRUCTURE

Some factions in construction may argue that the present bargaining structure has served them well over the years and there is no need for a change.

In individual cases, this may be true. Certainly tradesmen's pay cheques have been getting fatter. And some management groups have been able to obtain settlements

lower than the average -- for one round of bargaining at least -- although they pay for it in later years.

But in the long term, the present bargaining structure is not beneficial to construction management, the building trades' unions or the continued health of the provincial economy.

Through the years that the current bargaining structure has been in force, serious problems have arisen, problems that have become so familiar to those sitting at the bargaining table they are almost predictable in their appearance as each new set of negotiations begins.

THE PROBLEMS

(1) THE GUN-JUMPERS

Certain groups are so eager to settle they begin to negotiate even before the starting gun has been fired for a new round of negotiations. Quite often these groups reach settlements with no reference to the remainder of the industry.

By jumping the gun, these groups feel that they may settle for less than the prevailing trend which comes to the surface later as negotiations heat up. Indeed, some groups do save during one round of negotiations.

But they can be certain that the unions will be clamouring for catch-up the next time around, thus perpetuating the catch-up mentality instead of bargaining on a basis of what the companies can afford and the employees deserve.

Gun-jumping settlements become the early trends, and the remaining construction groups, who had no voice in the

early negotiations, are forced to at least match the first settlements and sometimes better them.

An example of this arose during the 1975 negotiations, when a plumbers' local settled for a \$3.25-an-hour increase before the old contract had even expired. There had been earlier settlements in the industry but the highest in the same trade at that date was \$2.93 an hour. When ratified on April 4, this \$3.25 became the magic figure for the rest of the industry and was matched or increased in dozens of cases during subsequent negotiations.

Without a doubt, this one gun-jumping, high-cost settlement led to higher average increases in many trades throughout the province than would have been the case had the trade association involved consulted with the rest of the industry.

(2) THE PROCRASTINATORS

The procrastinators are those groups which refuse to enter into serious negotiations until they see what the prevailing trend will be. They stall and stall, waiting for others to take the lead. But the trouble with the procrastinators is that the effect tends to snowball and before long, none of the trades will make a move -- each is waiting for the other to settle. Everyone is looking over his neighbour's shoulder and a restricting chain effect ripples through the industry. Management groups are as guilty of this as the unions, but in the unions' case, procrastination is costing the tradesmen money -- money they could have earned from working at the higher rates, had they reached agreement earlier in the negotiating season.

And, in most cases, the extra few cents per hour that a union picks up in a procrastinated settlement never replaces the money lost through delaying tactics.

Excessive procrastination can also lead to unwarranted strikes. For example, all but one union might have settled in a particular area. Then the holdout union goes on strike, causing a work disruption for the entire industry in the area.

Unfortunately, useless and unnecessary strikes caused through procrastination have been all too prominent in construction bargaining in Ontario. There were several sequential strikes in Toronto in 1961 and the sad history of labour unrest in Toronto in 1967 has been well documented in the book "Construction Labour Relations", by Senator H. Carl Goldenberg and Dr. John H.G. Crispo, Pages 471-472.

In 1971, ironworkers and operating engineers went on strike after the other trades had concluded new agreements, while in 1975, Toronto plumbers settled a lengthy strike on July 7, only to have the Toronto carpenters walk off the job on July 14.

Situations like this cause the trades which are prepared to establish a responsible trend to wonder if they are doing the right thing, or whether they should hold out, since they risk future unemployment through strikes called by trades which procrastinate.

(3) THE IMPACT OF A SETTLEMENT IN OTHER AREAS

The impact that one settlement has on other areas of the province cannot be overemphasized. Although they have been warned of the whipsaw effect, time after time, when negotiations get down to the crunch, local bargaining committees revert to the "every man for himself" philosophy.

Any local bargaining committee which thinks that it can negotiate in isolation is out of touch with reality. Every agreement affects scores of

negotiations still underway around the province.

Even though a bargaining unit may contain as few as a dozen tradesmen, there are thousands of others affected by every action of that unit at the bargaining table. Contractors who are not present at that particular table eventually have to agree to the same settlement or an even higher settlement for labour peace.

As an example, there was a series of strikes by carpenters in four cities in May and June, 1975. Then, on July 2, Windsor carpenters settled for \$3.17 an hour. This was followed on July 10 by a \$3.16 settlement by St. Catharines carpenters, on July 15 by a \$3.15 settlement by Ottawa carpenters and on August 12, by a \$3.16 settlement by carpenters in Sault Ste. Marie.

The per-hour increases were remarkably similar, within two cents of each other. However, the base rates from which each group started to bargain varied widely: Windsor - \$7.05; St. Catharines - \$8.41; Ottawa - \$7.83; Sault Ste. Marie - \$7.43.

Another situation is where the pecking order within a trade is upset, where for example, Toronto takes the lead one year, then Hamilton, then St. Catharines -- perpetuating the eternal "catch-up game", all trying to wind up as the highest paid in their trade.

A look at the city-by-city pecking order of the plumbers shows how tradesmen in one city play leapfrog with their fellow tradesmen in rival cities:

PLUMBERS

		Apr. 30/75		Apr. 30/77		Position in 1975	
		<u>Total Package</u>		<u>Total Package</u>			
1.	Hamilton	\$10.74		1.	Toronto	\$13.77	2
2.	Toronto	\$10.47		2.	Hamilton	\$13.75	1
3.	Windsor	\$ 9.73		3.	St. Catharines	\$13.04	8
4.	Kitchener	\$ 9.69		4.	Oshawa	\$13.01	6
5.	Ottawa	\$ 9.64		5.	Windsor	\$12.98	3
6.	Oshawa	\$ 9.59		6.	Sarnia	\$12.92	11
7.	Sudbury	\$ 9.56		7.	Ottawa	\$12.91	5
8.	St. Catharines	\$ 9.54		8.	Kitchener	\$12.79	4
9.	London	\$ 9.51		9.	Kingston	\$12.70	10
10.	Kingston	\$ 9.43		10.	Sudbury	\$12.44	7
11.	Sarnia	\$ 9.39		11.	Thunder Bay	\$12.41	12
12.	Thunder Bay	\$ 8.98		12.	London	\$12.34	9
13.	Sault Ste. Marie	\$ 8.76		13.	Sault Ste. Marie	\$10.95	13

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133
1

(4) THE IMPACT OF A SETTLEMENT ON OTHER TRADES

When a lower-paid trade reaches a higher than average settlement, this also upsets the pecking order, but this time between trades. It adds to the determination of the higher-paid trades to regain their "rightful" place. This has led to lengthy strikes -- not because management's offer wasn't fair and in keeping with the trend in the industry -- but because the union felt it must have those extra few cents to place its tradesmen higher than their traditional rivals.

This happened in Sarnia in 1975, when most trades settled for a four-year contract based on a percentage formula. According to the formula, electricians were to receive a \$3.25 an hour increase during the first two years of the contract. But when the lower-paid labourers were offered less, they refused and went on strike, leading to a lengthy shutdown.

During the strike, the plumbers refused to accept the same package as the electricians. They also struck, eventually settling for \$3.50 an hour for the first two years of a four-year contract.

Since the plumbers' settlement was higher than the electricians, the Sarnia association then had to offer higher amounts on a pro-rated basis to the other trades which had already settled.

(5) THE MAJOR UPSETTING PROJECT

Ontario doesn't have any single project of the magnitude of the James Bay hydro-electric installation, but it does have several which come under the category of major upsetting projects -- such as the various Ontario Hydro

installations around the province, the Nanticoke development, the Texasgulf Sulphur smelter in Timmins and the petrochemical development in Sarnia.

These multi-million-dollar projects are of such magnitude that they completely dominate the local construction scene and lead to unhealthy bargaining situations for local contractors. Usually, such major projects pick up local rates and conditions, with some fringe benefits being established especially for the upsetting project. Most major projects have no-strike, no-lockout agreements with the trades as well.

As an example, let's say that there are 300 union members in a certain trade in one city. The major project is started and employs 600 tradesmen, including most of the local union members.

When it comes to bargaining, if a local business agent does not like the proposal put forth by management, he can call for a strike vote, knowing that his members will be securely working on the major project for the duration of the disruption and that the only effect will be on local construction.

In a case such as this, it is only the local contractors who are under heavy pressure to settle, so they increase the terms of the settlement offer and, in the end, the

higher rates are picked up by the major project.

On the other hand, local contractors, through lack of knowledge, sometimes negotiate clauses affecting board, travel and camp conditions which apply only to the major project.

Since the costs of the major project can clearly become inflated through local bargaining, it is CLRAO's feeling that the principals involved in the major project should be present at the bargaining table.

If the current bargaining structure is allowed to continue, it also raises the question of which union members should be allowed to vote on a strike or ratification -- those who are working locally and who will actually be out of work if the strike occurs? Or all members of a local, including those who have secure jobs at the major projects, and are thus unaffected?

(6) OUT OF PHASE AGREEMENTS

Sometimes bargaining groups, when they are faced with a situation which seems to be leading to a higher settlement than desired, offer extended contracts instead, reasoning that the economic package can be stretched out over a longer period of time. But the actions of such groups put them out of phase with the rest of the industry, adding

fuel to the "catch-up" mentality of the unions when it comes time to renegotiate. And an out of phase contract, whether for a few months or several years, does not ensure labour peace.

While most of the local trades could, for example, have four-year contracts, trades which bargain provincially may have signed for two years. This leaves a city or area wide open for labour unrest when the two-year contracts come up for renewal.

There is no guarantee the trades involved in the two-year contracts will not go on strike, shattering the illusion of "labour peace" in out-of-phase contracts.

There is also no guarantee that the trades who signed the four-year contracts will not stage wildcat strikes or work-to-rule if they find other trades leaping ahead of them economically through newly negotiated two-year contracts.

Out-of-phase agreements also increase the potential for whipsaw. For example, in Toronto there are five separate expiry dates for contracts over the next two and a half years -- April 30, 1976; August 31, 1976; April 30, 1977; July 31, 1977 and October 31, 1977.

Unions which bargain last in such a situation will

naturally want to "catch up" or forge ahead of the unions whose contracts expired on earlier dates creating a perpetual merry-go-round.

(7) FRAGMENTATION OF CONSTRUCTION THROUGH THE
ONTARIO LABOUR RELATIONS ACT

The present division of construction into seven sectors under the Labour Relations Act of Ontario serves to fragment the industry further, leaving it prone to the possibility of separate contract termination dates and varying working conditions from sector to sector.

In a labour relations context, CLRAO feels it is wrong to base sectors on types of construction. Rather, it is human relations which are of the prime importance. Therefore, sectors should be more closely aligned with the labour skills required to perform the task.

(8) TENDENCY OF EMPLOYERS TO BREAK RANKS

Because there is no mandatory discipline imposed on management groups, some employers break ranks when negotiations get tough, leading to hasty settlements which adversely affect the remainder of the industry, either through excessively rich settlements, out-of-phase contracts or agreements for retroactive compensation.

Existing accreditation is far from being a total solution

to this problem because it allows contractors to attempt to continue operations in spite of a strike or lockout.

(9) UNIONS WITH DIFFERENT AGREEMENTS IN THE
SAME GEOGRAPHIC AREA

Some unions have split membership and two or more separate collective agreements are negotiated by the union for one geographic area. All members of the union are allowed to vote on all proposed settlements, so that under this situation, people who are not directly affected by the outcome nevertheless have a voice in determining whether the settlement is accepted.

ARE THE PROBLEMS SERIOUS ENOUGH TO WARRANT CHANGES IN
THE BARGAINING STRUCTURE?

Construction costs have now reached the point where they are seriously eroding the market for, and financial viability of, unionized contractors.

In the past few years, there have been several instances where major multi-million dollar projects have either been delayed or cancelled, mainly because steadily-increasing costs have made them uneconomic or only marginally feasible.

As well, non-union construction is on the increase in Ontario, following a similar trend in the United States. To cite one example, the City of London Building Inspector's

Office analysis of building permits covering the period from January 1, 1972, to November 24, 1972, shows total permits for all building construction at \$92 million.

Of that amount, unionized contractors were successful in bidding on \$31 million, or 33 per cent of the total.

The same Building Inspector's report covering the period from January 1, 1975 to October 10, 1975, shows total construction at \$68 million, of which unionized contractors successfully bid on \$16 million or 24 per cent of the total.

This shows a serious decrease in the amount of construction being awarded to unionized contractors, a trend that is prevalent in many Ontario cities.

As well as buyers of construction turning away from unionized contractors, more and more major industries are establishing their own in-house construction crews, composed of industrial workers instead of traditional building trades' craftsmen.

To continue along the present course without attempting to correct the situation would be nothing short of economic suicide for both the contractors and the building trades.

One quick solution might seem to lie in unionized

contractors becoming non-union.

But that is not the answer either.

The unionized segment of the industry has many worthwhile accomplishments to its credit down through the years. It has been the pattern setter in the area of human relations -- for which the unions deserve much of the credit -- such as apprenticeship, safety promotion, pensions and other employee benefits. All of these have had a rub-off effect on the total industry.

Indeed, the unionized segment of the industry deserves to exist.

What is needed to correct the situation in which the unionized segment finds itself is a return to stability in construction and its labour relations, accomplished, at least partially, by a reduction in the number of bargaining situations throughout the province.

The only direction the present bargaining structure is leading to in the construction industry is increased instability.

But with change, mature labour relations will promote stability. And mature labour relations depends upon the acceptance by both management and the unions of each other's right to survive.

THE ALTERNATIVES FOR CHANGE

To our mind, there are three options open to the Commission on the wider-area bargaining issue:

- (1) Leave the bargaining structure as it is now.
 - (2) Adopt a form of voluntary wider-area bargaining,
or
 - (3) Adopt a legislated form of wider-area bargaining.
-
- (1) CLRAO has already listed the problems caused by the present bargaining structure and the destructive effect that the present structure is having on both management and unions.

To leave the bargaining structure as it now stands doesn't alleviate the main problem -- the fact that the parties most affected are not at the bargaining table.

In the end, the present structure, if it is allowed to continue unchanged, will leave unionized contractors with only a small percentage of the total construction pie and union members with paper contracts entitling them to large wage packages, when and if they can find work.

- (2) CLRAO does not believe that a voluntary form of wider-area bargaining would be practical.

It has been tried and, despite the noble intentions and the massive effort that went into an earlier attempt, it did not succeed.

In 1971, the now defunct Ontario Federation of Construction Associations joined with the Building and Construction Trades Council of Ontario to work toward the establishment of province-wide agreements for each construction trade.

But because it was a voluntary plan, the situation became one of everyone looking over each other's shoulder to see whether others were joining. If one union stayed out, then the counterpart management group stayed out and vice versa. In the end, the plan collapsed.

However, this attempt at organizing management and the building trades on a province-wide, single-trade basis did prove one important point. The majority of both management and building trades' unions were in favour of the plan at that time and continue to be in favour of such a move at the present time.

- (3) This leaves but one option -- a legislated form of wider-area bargaining.

Down through the years, construction has become so fragmented, that there is absolutely no hope that the management or the unions could be pulled together for wider-area bargaining on anything but a legislated basis, mandatory on all parties.

To be practical, the bargaining format should be simple, eliminating mixtures of bargaining situations such as zone multi-trade by some trades with the remainder on a province-wide single-trade basis.

WIDER-AREA BARGAINING ALTERNATIVES

As CLRAO sees them:

1. Regional Bargaining on a Single-Trade Basis.
2. Regional Bargaining on a Multi-Trade Basis.
3. Zone Bargaining on a Multi-Trade Basis.
4. Province-Wide, Single-Trade Bargaining.
5. Province-Wide, Multi-Trade Bargaining.

Prior to the presentation of this brief, CLRAO officers toured the province seeking a consensus from the construction industry on the wider-area bargaining question.

The majority of unionized employers is in favour of the Province-Wide Single-Trade alternative.

RECOMMENDATIONS FOR CHANGE

PROVINCE-WIDE, SINGLE-TRADE BARGAINING

CLRAO's recommendations for the alternative most acceptable and most practical for all parties concerned is for Mandatory Province-Wide, Single-Trade Co-ordinated Bargaining.

DEFINITION

By Province-Wide, Single-Trade, we mean a contractor group representing all the unionized employers of a particular trade negotiating a provincial agreement with the Provincial Council (or equivalent) of that particular union. In the negotiations, special appendices would be negotiated as necessary for any subdivision of the trade and also to take into account the requirements of major construction (or upsetting) projects.

CLRAO emphasizes that it is proposing only that the actual negotiations of collective agreements be moved to a provincial scale. Notwithstanding the decision of the Ontario Labour Relations Board in the Lummus Case (File No. 1304-75-M), it is considered to be essential that the administration and policing of the agreements should continue to be a function of the union and management

representatives at the local level. It is considered to be equally as essential that the designated employer negotiating group and the designated employer co-ordinating body be consulted in all matters of interpretation of the collective agreements.

In any move toward wider-area bargaining, we feel that it is imperative that proper safeguards be incorporated into the negotiating mechanism to allow for regional differences in wages, working conditions and trade practices.

THE REASONS FOR CLRAO'S CHOICE

WHY CHOOSE PROVINCE-WIDE, SINGLE-TRADE?

One of the most compelling arguments must be that there is already a strongly-established trend toward this option, with some nine unions out of the 20 normally associated with construction already bargaining on what is tantamount to a province-wide basis.

These nine unions contain approximately 20 per cent of the unionized construction work force.

As well, there is an additional approximate five per cent of the unionized work force covered by provincial

agreements negotiated by subdivisions of a trade, such as crane operators on structural steel and drywall applicators under the carpenters union.

In 1971, the province-wide, single-trade format was chosen as the most acceptable by both management and the building trades' unions when the Ontario Federation of Construction Associations and the Provincial Building Trades' Council attempted to organize bargaining on a wider-area basis.

This option would reduce the number of bargaining situations to about 20, the number of trades normally associated with construction in the province.

This alternative would also reduce the potential for sequential work stoppages and tend to standardize and stabilize working conditions, leading in the future to the possibility of truly portable benefits throughout the construction industry.

Province-wide bargaining would increase public and government interest in the negotiations and consequently, the pressure on both unions and management to reach a settlement, or series of settlements, without the disruptive effects on the economy caused by a province-wide strike or lockout.

Single-trade, province-wide negotiations would help to confine bargaining to the real and valid issues and would remove problems that have occurred as the result of political influences within a local union or management group. It would also remove bargaining from the influences of local personality differences or of narrow self interest on either side.

It would also minimize the chance for union members to vote on contracts they are not directly involved in, as now exists on a local basis. In most instances, all members of a trade would vote on one contract for that trade. However, this does not entirely solve the problem. There could still be odd instances of two agreements within the same union covering work in different sectors in the same geographic area.

WHY MUST PROVINCE-WIDE, SINGLE-TRADE BE MANDATORY?

The past history of attempts to co-ordinate bargaining on a wider-area basis has been one of sincere intentions but ultimate failure because such attempts were of a voluntary nature.

As long as there is a chance to opt out, certain management groups and certain unions will use that loophole to their own advantage. Province-wide, single-trade bargaining

if it is the option chosen by the Commission, must be made binding on all parties concerned or the scheme will fail.

We again cite the attempt by the Ontario Federation of Construction Associations and the Building and Construction Trades' Council of Ontario in 1971.

Most of the parties concerned were all in favour of working toward the establishment of province-wide agreements for each construction trade. But then some began to have second thoughts when they saw certain management groups and unions withdrawing from or refusing to join the voluntary plan for greater bargaining flexibility for their own particular group. And in the end, the plan collapsed.

Voluntary wider-area bargaining has too many loopholes in it -- too many avenues of escape. And those groups which bargain apart from the majority under such a concept can only tear apart the understanding that the concept was founded upon.

WHY MUST PROVINCIAL BARGAINING BE CO-ORDINATED?

To our minds, co-ordination is the master key to the success or failure of province-wide, single-trade bargaining.

Without it, such a structure would only lead to more exotic whipsawing than exists under the present structure. Each trade would operate in a vacuum, trying to outguess and outperform its rivals.

Without co-ordination, there would be far more spectacular problems than those currently faced by the industry.

It is only through co-ordinated bargaining that progress is going to be made toward dealing with the problems associated with the current bargaining structure and outlined earlier in this brief -- problems such as the gun-jumpers, procrastinators, upsetting projects, out-of-phase settlements and unnecessary strikes and lockouts.

Not only do the diverse interests of the trades on both the union and management sides have an impact on each other, but also within each trade are divergent interests which are often conflicting and contradictory to other interests. Such divergent interests must be recognized as a way of life in the construction industry.

For example, there are general and trade contractors who usually sign local agreements and work on a lump-sum tender basis. This group is further split into sub-groups, such as:

1. Small, strictly locally-operating companies.

2. Medium and large companies with a broader geographic base of operations.

Then there are national contractors who move where the work is and either negotiate separate agreements or pick up local rates. As well, there is Ontario Hydro with its own priorities.

WHY MUST CO-ORDINATION BE MANDATORY?

No one can legislate utopia.

But in this case, we feel most strongly that the co-ordination must be made mandatory because all previous attempts at co-ordinating bargaining in the construction industry on a voluntary basis have failed.

Sequential work stoppages in Toronto in 1965 and 1967 led to the establishment of a co-ordinated management effort in 1969 through the Labour Relations Council of the Toronto Construction Association. However, this attempt failed because it proved to be impossible to operate on a voluntary basis. And, in the meantime, the introduction of single-trade, localized accreditation has done nothing to alleviate the situation.

In 1971, when the Ontario Federation of Construction

Associations (OFCA) and the Building Trades' Council of Ontario attempted to move to province-wide, single-trade bargaining, OFCA realized the situation would require co-ordination and formed a Co-ordinating Council of the various trade employer groups in the province to monitor the progress of bargaining.

However, the overall attempt at wider-area bargaining failed and, as a report by OFCA noted after the negotiations of that year, "the weakness of the Co-ordinating Council lay in its voluntary nature".

Co-ordination must be introduced on a mandatory, legislated basis so that all parties must participate. There must not be any opportunities for "doubting Thomases" to obtain short-term advantages by being able to negotiate outside the co-ordination framework.

Finally, it must be emphasized that the existing accreditation legislation does not provide the necessary framework for achieving the stated objectives. Accreditation is only granted as the result of a voluntary application. As well, its scope is, generally speaking, limited to the existing bargaining structure. Therefore, new legislation will be needed.

WHAT LEGISLATION IS NEEDED?

We are not asking for legislation to coerce parties into doing something they don't want to do. We are asking for legislation to enact what the majority clearly wishes to be done.

Therefore, we propose that for the industrial, commercial and institutional sector, the structure as outlined in the accompanying chart, and subsequent explanations, be established by legislation:

CONSTRUCTION JOINT COLLECTIVE BARGAINING
CO-ORDINATING COMMITTEE

C.L.R.A.O.

UNION STRUCTURE

- 154 -

MAJOR
INDUSTRIAL
CONSTRUCTION
DIVISION

MCAO

ECAO

AMCO

OGCA

OEA

Appendices for
sub-divisions
of the trade

Appendices for special
conditions (e.g. maintenance
clauses)

Appendices for
local economic and
general conditions

(Note: This shows only a fraction of the trades, as an example of the structure)

THE OPERATION OF THE NEW BARGAINING STRUCTURE

(1) SECTORS

For accreditation purposes, the construction industry is presently divided into seven sectors, based on types of construction. It is our experience that this division has led to further fragmentation within the industry than existed prior to the introduction of accreditation in 1971.

However, we feel that there is a fairly natural division of the industry on the basis of the differences in the labour market. It is interesting to note that this division has been adopted in legislation in some of the Atlantic Provinces.

Therefore, we do not propose the elimination of the sector concept, but rather a realignment, as follows:

- (A) INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, which would include the present industrial, commercial and institutional sector and the electrical power systems sector.
- (B) CIVIL ENGINEERING SECTOR, which would include the roads sector, the sewer and watermain sector and the heavy engineering sector.

(C) PIPELINE SECTOR, as it is now constituted.

(D) RESIDENTIAL SECTOR, as it is now constituted.

Because CLRAO represents in the main employers who are primarily engaged in work in the industrial, commercial and institutional sector, we will confine our remarks and recommendations to that sector.

The industrial, commercial and institutional sector is responsible for providing work for the majority of unionized contractors and the majority of union tradesmen in Ontario.

Consequently, it is the pattern setter in labour negotiations for the entire industry. Until the bargaining structure in industrial, commercial and institutional is changed, then none of the sectors will have stable labour relations.

(2) AGREEMENTS

(A) Under this new structure, one agreement would be negotiated for each construction trade.

Appendices to each provincial agreement would be negotiated as necessary, to cover such matters as:

1. Subdivision of a trade, such as in areas

where resilient flooring is recognized as a subdivision of the carpenters' trade.

2. Special conditions, such as maintenance clauses.
3. Items of a localized nature, particularly regional differences in trade practices, working conditions and wages.

- (B) The only valid collective agreements would be those negotiated and signed in the name of the respective designated employer group. Unionized employers would be required to abide by agreements in respect of those trades and areas for which either certification or voluntary recognition had been granted.
- (C) All collective agreements would be required to be for a common term and would be required to have a common expiration date.
- (D) All negotiations for the renewal of collective agreements which expire on or after April 30, 1977, would be carried out in accordance with the foregoing procedures. All such collective agreements would only be legal and binding if they have been negotiated in compliance with the foregoing procedures.

- (E) Collective agreements which have an expiry date after April 30, 1977, would be treated as appendices to the provincial agreements which come into effect on or after May 1, 1977, and would continue to operate in accordance with their terms until their expiry dates.

(3) DESIGNATED TRADE EMPLOYER GROUPS

- (A) Each provincial trade agreement would be negotiated by the designated trade employer group. Where viable groups are already in existence representing employers in a particular trade, these groups would be designated in the legislation.
- (B) In such cases, unionized employers within a particular trade group should have a reasonable but limited time period after the coming into force of the legislation in which to challenge the designation of the particular trade employer group.
- (C) In the case of trades which do not have a representative provincial trade group, the legislation should provide a reasonable but limited time period for the establishment and

designation of an employer group for each such trade.

(4) CO-ORDINATION

- (A) Under this bargaining structure, we propose that the Construction Labour Relations Association of Ontario be designated by legislation as the sole co-ordinating body for construction employers in the industrial, commercial and institutional sector.
- (B) In the three years of its existence, CLRAO has proven that it can co-ordinate bargaining, even though its success has been severely hampered by the fact that it has had to operate on a voluntary basis.
- (C) And, as we have argued earlier, to be a success, province-wide, single-trade bargaining must be co-ordinated and must be legislated, with the legislation containing enough authority to compel both management and the unions to bargain under the new structure.
- (D) All the designated employer groups would be required to be members of CLRAO through legislation. Each would appoint one person to serve on

the Board of Directors of CLRAO. (The necessary changes would be made to CLRAO's constitution and bylaw.)

(E) All proposed collective agreements would be required to be presented to the Board of Directors of CLRAO for initial approval. Once approved, the proposed collective agreement would then be presented to the contractor members of the designated employer group for ratification. Ratification would be by a simple majority of the ballots cast.

(5) MAJOR INDUSTRIAL CONSTRUCTION DIVISION

(A) In addition to the membership within CLRAO of the designated employer groups, there would be created within CLRAO a Major Industrial Construction Division. This division would appoint two persons to serve on the Board of Directors of CLRAO. This division would be responsible for negotiating special conditions, as deemed necessary, for major industrial projects.

GENERAL COMMENTS ON THE PROPOSED BARGAINING STRUCTURE

1. The chart on page 35 suggests the formation of a Construction Joint Collective Bargaining Co-ordinating

Committee. Legislation to establish this committee is not immediately proposed. However, it is recognized that the establishment of such a committee, with "public interest" participation, may be seen to be desirable at some later date. In the beginning, CLRAO feels that the proposed structure should be allowed at least the experience of one round of negotiations to prove that it can work without the guidance of such a committee.

2. Throughout our discussion of the proposed legislative changes we have confined our remarks to the management structure. However, we feel that consideration must be given to the establishment of an equivalent structure for the unions.
3. The new bargaining structure should incorporate safeguards to make allowance for local area needs through appendices to the province-wide contracts as outlined in the organizational chart on page 35.
4. The new bargaining structure could also accommodate the development of voluntary multi-trade negotiations at the provincial level.

DOES THIS PROPOSED BARGAINING STRUCTURE SOLVE
THE PROBLEMS OF BARGAINING?

The Commissioner might ask: How does Mandatory Province-

Wide, Single-Trade Legislated and Co-ordinated Bargaining solve the problems inherent in the current bargaining situation?

To take them one by one:

- (1) Groups which now tend to jump the gun on negotiations would be co-ordinated, which would alleviate the tendency.
- (2) The existence of effective union and management co-ordinating organizations would eliminate the procrastinators by having the interests of the province-wide management and labour movement at heart instead of one recalcitrant trade.
- (3) Effective co-ordination would eliminate the impact that one settlement has on other areas.
- (4) The impact one settlement has on other trades would still be present, but again the umbrella co-ordinating organizations would be viewing a province-wide picture instead of a local situation.
- (5) The effect major upsetting projects now have on the bargaining picture would be eliminated, since there would be a provision for a Major Industrial Construction Division which would negotiate any

special conditions pertaining to major projects.

- (6) There would be no out-of-phase agreements.
- (7) Because of the co-ordination machinery, the possibility of sequential work stoppages would be greatly reduced. Once most trades had reached agreement, there would be mounting pressure on remaining trades to settle.
- (8) In the case of unions with split membership, with members now entitled to vote on contracts they are not directly involved in, this problem would be minimized. In most cases there would be only one agreement per trade with all persons in that trade voting on it.

However, in other cases, it could be possible for some unions to negotiate separate agreements with different sectors within the same geographic area.

This could be a continuing problem under a wider-area bargaining structure and one which may require specific legislation to restrict union members from voting on contracts that do not directly affect them.

As can be seen, mandatory, province-wide, single-trade co-ordinated and legislated bargaining goes a considerable way toward solving the problems currently besetting the industry.

But it all hinges on co-ordination. Without co-ordination, such a scheme could make bargaining more chaotic than before. Co-ordination is needed to weld the whole unit together, to prevent instances where 19 trades have settled

and the 20th decides to strike, or is locked out, leading to a halt on all union construction throughout the province.

If wider-area bargaining is introduced without co-ordination it could result in labour relations in the construction industry taking a step backward instead of progressing forward.

IN CONCLUSION

The unionized section of construction is not the only portion of Ontario society touched by the malaise in our industry.

Citizens around the province feel the effects through higher apartment rents, increased housing costs and -- indirectly but inevitably -- higher prices for consumer goods and additional taxes.

As we said earlier, unionized construction is the pace setter. When union tradesmen sign new contracts, the rates of non-union tradesmen are increased accordingly.

This leads to higher costs for housing, at a time when Canada is already facing a serious housing shortage and when housing costs have reached astronomical heights in some parts of the province.

For example, 40 per cent of the construction costs of an average apartment building, excluding land costs, are labour costs. A 30 per cent increase in labour costs represents an increase in the construction cost of that apartment complex of 12 per cent.

As a result, the rental rate, depending on the type of suite, must be raised by \$30 to \$45 per unit per month.

This is only as a result of the increases in the labour component. It does not take into account any increases in the prices of construction materials.

When a shopping centre is built, the labour component is nearly half of the total construction cost. Any increase in labour rates is reflected in higher rents for merchant-tenants in the centre. The costs must be passed on and in turn, the consumer pays more for food, clothing, shoes -- almost everything available at the shopping centre.

Federal and provincial governments are the major buyers of construction. When labour costs escalate, the cost of roads, bridges, dams, power installations and government buildings escalates and each taxpayer contributes to the inflated end price.

So many primary and secondary industries depend on construction for the sale of materials that they in turn are affected by an unhealthy construction outlook.

Construction in Canada in 1976 is expected to generate \$30-31 billion toward the Gross National Product. Traditionally, one-third, or approximately \$10.16 billion of that construction takes place in Ontario, contributing about 16.5 per cent to the Gross Provincial Product of \$62.2 billion.

When construction slows down, then the provincial economy is affected.

And when construction is hurting, every citizen in the province feels the pain.

There is no panacea that will alleviate all that is wrong

with labour relations in the construction industry.

But we feel strongly that Province-Wide, Single-Trade Bargaining is the most logical and most workable of all the alternatives available.

To make it work, Province-Wide, Single-Trade Bargaining must be:

- (1) Co-ordinated.
- (2) Legislated.
- (3) Mandatory on all parties.

For the future and continued prosperity of the unionized construction industry, including the building trades' unions, and for the continued health and growth of that segment of the provincial economy which construction represents, we feel it is essential that Province-Wide, Single-Trade Co-ordinated Bargaining be legislated into effect well in advance of the 1977 round of negotiations.

Respectfully submitted on behalf of

THE CONSTRUCTION LABOUR RELATIONS ASSOCIATION OF ONTARIO
WITH THE SUPPORT OF THOSE CONSTRUCTION
ORGANIZATIONS LISTED IN APPENDIX A.

(sgd) W. Gibson
Chairman

(sgd) C. Heywood
President

Construction Organizations which support the Brief of
The Construction Labour Relations Association of Ontario:

Accoustical Association Ontario
Association of Millwrighting Contractors of Ontario
Canadian Association of Foundation Specialists
Construction Association of Thunder Bay
Crane Rental Association of Ontario
Electrical Contractors Association of Ontario
General Contractors Association of Niagara
Grand Valley Construction Association
Grand Valley Construction Association - General Contractors'
Section
Hamilton Construction Association
Hamilton Construction Association - General Contractors' Section
Hamilton and District Sheet Metal Contractors Inc.
Kingston Construction Association
London & District Construction Association
London Sheet Metal Contractors Association
Master Insulators' Association of Ontario Inc.
Mechanical Contractors Association of Hamilton
Mechanical Contractors Association of Kingston
Mechanical Contractors Association of Kitchener-Waterloo
Mechanical Contractors Association of London
Mechanical Contractors Association of Niagara
Mechanical Contractors Association of Sudbury
Mechanical Contractors Association of Thunder Bay
Mechanical Contractors Association of Windsor
Niagara Construction Association
Ontario Erectors Association
Ontario General Contractors Association - In principle and
as supplemented in its own brief
Ontario Industrial Roofing Contractors Association
Ontario Refrigeration and Air Conditioning Contractors
Association

Ontario Sheet Metal and Air Handling Group

Oshawa & District Construction Exchange

Ottawa Construction Association

Painting & Decorating Contractors of Ontario

Peterborough and District Construction Exchange

Quinte Construction Association

Reinforcing Steel Institute of Ontario

Sault Ste. Marie Builders Exchange

Sudbury Construction Association

Terrazzo, Tile and Marble Guild of Ontario - Wishes to have
the same bargaining structure for all sectors.

Windsor Construction Association

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APPENDIX "F"

BRIEF SUBMITTED BY
THE OWNER CLIENT COUNCIL
OF
ONTARIO

INTRODUCTION

1. The Owner Client Council of Ontario is a voluntary, informal organization of twenty four major corporations having substantial construction interests within the Province of Ontario. Council members represent leading sectors of industry such as steel, oil chemical, automotive, mining and utilities.
2. The purpose of the Council is to encourage the construction industry to provide improved construction services and to achieve and maintain stable and harmonious labour relations. The Council is also concerned with the cyclical demand for construction services and the availability of skilled construction manpower in the future. It will co-operate with the construction industry and appropriate agencies of government in dealing with these and related matters.
3. The Council was established in November 1970 as an advisory committee to the Ontario Federation of Construction Associations and its successor, the Construction Labour Relations Association of Ontario. This relationship ceased in September 1974 when the Council was reorganized into an independent organization.
4. Through close liaison with the construction industry, the Council has witnessed at first hand the problems of construction labour relations. Council members, as major buyers of construction are well aware of the inflationary increases in labour costs arising from the construction industry's collective agreements. In addition to the direct impact of these labour costs upon the overall cost of construction, the continuing escalation of construction wages and benefits has had an injurious effect on industrial corporations through the creation of unrealistic expectations in their own collective bargaining.
5. Excessive labour costs have damaged the construction industry and the Council believes that both contractors and craft unions are concerned about this. Both parties are however faced with the same problem - over three hundred separate and uncoordinated bargaining situations throughout the Province.
6. Many local craft unions are strong and independent; the leaders of local unions can be, and not infrequently are, over-ruled by their members. Under

these circumstances it is not surprising that the long term wisdom of some local craft union leaders is submerged under the short-term interests of their members.

7. The Council appreciates the opportunity of making recommendations concerning the future of collective bargaining in the construction industry. After careful study of the problems, it is the opinion of the Council that the existing structure is unsound and that little or no progress towards more stable and rational labour relations in construction will be achieved until the entire system is revised.

RECOMMENDATIONS

8. The recommendations contained in this Brief are summarized below:
 - (a) The unanimous support of union contractors is required for a central management organization, such as the Construction Labour Relations Association of Ontario, which will manage all negotiations in the industrial, commercial and institutional sector of the construction industry.
 - (b) The Council believes that multi-trade, province-wide agreements, giving full recognition to economic areas, regional wage rates and local conditions, represents the objective of coordinated, province-wide bargaining. As a first step towards that objective, the Council recommends the establishment by legislation of single-trade province-wide agreements within the industrial, commercial and institutional sector, subject to full and effective coordination by construction management over the various trade negotiations.
 - (c) Province-wide bargaining must be supported by union ratification or strike vote procedures which are based upon majority votes on a province-wide basis and not local by local. Such voting procedures must also provide a representative and accurate reflection of the wishes of those union members who will be directly affected by the outcome of the vote.
 - (d) The Council believes that effective implementation of these collective bargaining recommendations can only be achieved by legislative action so that these urgently needed changes can be

accomplished before the next major round of construction bargaining in 1977.

- (e) It is recommended that all construction agreements should be required by law to commence and terminate on common dates in any given year.
- (f) It is recommended that legislative recognition be given to the rights of contractors within the industrial, commercial and institutional sector to negotiate special appendices to provincial agreements to cover work on major projects which is subject to special or unusual conditions. Such appendices would provide uniform work rules and allowances for special projects which would add to or modify the province-wide agreements with each construction trade. This procedure would apply particularly to major projects in remote locations.
- (g) It is recommended that national agreements which pick up prevailing wage rates or other conditions in local areas should be declared illegal in the Province of Ontario.
- (h) In all of the foregoing recommendations, the Council considers it essential to ensure that no legislative action is undertaken which would restrict competition by non-union contractors or restrict the flexibility of owner-clients in determining the most efficient methods of meeting their construction needs.

INDUSTRY STRUCTURE

- 9. The construction industry can be regarded as a cellular structure composed of labour and management cells. The labour cells, being craft union locals, are easily identifiable. The management cells, being those construction associations involved in labour relations, are not so easily identified because their spheres of influence overlap.

Construction Associations

- 10. Notwithstanding the trend to centralize bargaining authority through province-wide labour relations, a large number of construction associations are still intimately involved in collective bargaining with the craft unions. These associations may be classified as follows:

Local contractors' associations, representing a mix of trades, which conduct negotiations with various craft unions on behalf of groups of their members in a local area.

Local contractors' associations, representing a single trade or specialty, which conduct negotiations with one or more craft unions on behalf of their members in a local area.

Provincial contractors' associations, representing a single trade or specialty, which conduct negotiations with one or more craft unions on behalf of all their members throughout the region or the entire province.

11. This organization, which has evolved over the years on a random basis, is a system of power centres in which associations frequently challenge each other for control of a contractor's bargaining rights. While each association has a titular leader, normally a member who is elected to serve a term of office as president, the centre of labour relations power in an association frequently lies in the hands of its labour relations committee chairman, who is generally supported by a full-time, salaried manager or labour relations officer.
12. Labour relations committee chairman are normally member contractors who are elected to the positions. All too often their training for this important responsibility consists of having participated in negotiations once or twice before. Yet these people are the leaders of construction management who meet with well trained, full-time negotiators from the craft unions. Labour relations training for management representatives is an obvious but over simplistic solution. Training courses already exist but, without questioning their adequacy, few contractors are able to take sufficient time off their work to attend. In addition, there is reason to believe that some management representatives on bargaining committees are not well suited for the task. They are elected, not selected, and while some are elected on a popularity basis, others may get there through the absence of any other volunteers for the job. Although there are competent negotiators representing construction management, the Council believes that this number is too small and that major efforts should now be made to increase the degree of professionalism among management negotiators.

13. The future development of construction labour relations, as proposed in this brief, will also require the duties and responsibilities of all construction associations to be rationalized so that labour relations accountability is clearly assigned. The Council has recognized and supported the aims and objectives of the Construction Labour Relations Association of Ontario, believing that it is essential for construction management in the industrial, commercial and institutional sector to establish a central bargaining organization for all trades throughout the province. The Council therefore considers it most urgent that all union contractors in the province should support an organization which will manage bargaining throughout Ontario on behalf of construction management in the industrial, commercial and institutional sector of the industry.

Craft Unions

14. The craft union system is founded upon the concept of standard area agreements for each trade, with separate agreements covering certain sectors of the industry. All craft union employers operating in an area are thus governed by common wage rates, benefits and working conditions for each trade they employ. While this concept is equitable and logical for both contractors and craftsmen, its implementation on a local area basis has given rise to the multiplicity of construction agreements which now exists. From the motivational viewpoint, the present system of local bargaining has all the merits of widespread participation. With over three hundred local agreements existing in Ontario, there can be an involvement of more than three thousand labour and management representatives in their negotiation. It is a flexible and decentralized system, thus providing for maximum responsiveness to local conditions.

It is noted that the Labour Relations Act empowers the Labour Relations Board to divide the province into bargaining areas. The craft unions however, do not recognize Board areas and operate within their own geographical jurisdictions. This causes further complexity in local bargaining.

15. Independent local bargaining is uncontrollable and mutually competitive. Local unions are inherently obliged to compete with each other in order to gain the largest rewards for their members. This competition, which results in the leap-frogging

and whip-sawing of wage rates and benefits, creates powerful forces for the escalation of labour costs. The process becomes a repetitive cycle because the unions which turn out to be "losers" in one round of negotiations will demand catch up with the "winners" as a jumping off point in the next negotiations. In this manner continuing escalation of labour costs has been built in to the construction industry, regardless of the overall economic conditions.

16. Collective bargaining on this basis is totally irrational and it may well be irresponsible in terms of the industry as a whole. Major buyers of construction services are seeking alternatives to traditional construction and are re-assessing their future construction needs in order to avoid the impact of grossly inflated construction costs.

BARGAINING PATTERNS

17. A move towards wide area bargaining is now an established trend throughout the construction industry in the United States and Canada. But the structure of the construction industry based upon local enclaves of labour and management, is proving to be an obstacle hindering this development. Progress is therefore slow as local unions and local construction associations seek to retain their sovereignties.

Wide Area Bargaining

18. The establishment of wide area bargaining is seen to be an essential first step in bringing construction labour relations under control. Such a plan would require construction employer groups and the craft union locals with which they bargain, to negotiate through central agencies for collective agreements which would cover a geographical region as large as the whole province.
19. Through this plan the Council believes that the destructive competition between union locals to obtain the greatest rewards would be substantially reduced or eliminated. This does not imply uniform wage rates throughout the province nor does it imply that all unions would receive identical offers from management. Separate negotiations for each trade would continue, unless the parties desired multi-trade arrangements, but the resultant collective agreements would embrace the whole province.

The Council believes that multi-trade, province-wide agreements, giving full recognition to economic areas, regional wage rates and local conditions, represents the objective of fully coordinated bargaining within the industry. As a first step towards that objective, the Council hereby recommends the establishment by legislation of single trade, province-wide agreements within the industrial, commercial and institutional sector, subject to full and effective coordination by management over the various trade negotiations. Wage rate zones and special work rules for designated areas should form a part of these provincial agreements, as determined by the parties.

20. There is ample precedent already existing in Ontario's construction industry for province wide bargaining since several craft unions, including the boiler-makers, millwrights, insulators, ironworkers, painters and bricklayers, now negotiate on a provincial or regional basis.
21. In January 1971 the now defunct Ontario Federation of Construction Associations and the Building and Construction Trades Council of Ontario, A.F. of L., agreed to work together towards the establishment of province wide agreements for each construction trade. Unfortunately neither of the parties was able to convince a majority of their respective members of the wisdom of this plan. As a result their efforts were unsuccessful, with the notable exception of the bricklayers union, which achieved its first province wide agreement during the following year.
22. The Council does not believe that province wide bargaining will solve all the problems of construction labour relations. It is therefore emphasized that this plan is proposed as a sensible and practical basis from which additional progress can be made. But the plan itself creates certain problems which must be resolved before it can function effectively.

Provincial Bargaining Councils - Craft Unions

23. Following established precedent, craft union locals can appoint representatives to a provincial bargaining council and authorize that council to conduct negotiations on their behalf. However, by law and by constitution, each local union remains as the exclusive bargaining agent for its members. The power to ratify a proposed agreement, or to strike

in the absence of agreement remains vested in the union local. A provincial bargaining council is therefore obliged to seek ratification or strike authority from each of its constituent locals. Rejection by one local would negate any action on a province wide basis. This could render a provincial council powerless to call a strike when appropriate or it could subject a serious management offer to whip-saw tactics in order to force a higher offer.

24. It is therefore proposed that province-wide bargaining must be supported by union ratification or strike vote procedures which are based upon majority votes of the aggregate total of all members in each constituent local. In this manner, union members will make vital negotiating decisions on a province wide basis and not local by local.

It is also recommended that union voting procedures be established which will ensure that all votes accurately reflect the wishes of those union members who will be directly affected by the outcome of each vote.

There is a great disparity among the sizes of craft union locals in Ontario. It is to be expected that locals in Hamilton and Toronto could outvote the remainder of the province. This could mean that an agreement which was acceptable to these large locals could be imposed upon the remainder of the province even if some of the smaller locals objected. However, this possibility should not become a basis for rejecting this proposal since it is more a matter of principle than of practical concern to the union members. As noted earlier, provincial bargaining permits the inclusion of any special provisions desired by a particular area and in this manner it should be possible to cater to the special needs of both local contractors and local craft unions without jeopardizing the establishment of a province-wide agreement.

25. As noted in the Background Paper issued by the Inquiry Commission, the administration of collective agreements is a continuing responsibility.

This administration is currently carried out by local unions within their jurisdictional areas and nothing proposed herein would change that responsibility. Only the negotiation and re-negotiation of province wide agreements would be carried out at

the provincial level while local organizations would continue to be responsible for all other matters.

Therefore, there is no cause for any claim that this plan would emasculate local unions or destroy their independence.

Provincial Bargaining Councils - Construction Management

26. Construction management is faced with different problems in establishing provincial bargaining for all trades. Management's negotiating responsibilities are vested in numerous associations at local and provincial levels, as defined earlier. The Construction Labour Relations Association of Ontario has made good progress but is still a long way from achieving its goal of province-wide representation in all trades. Major efforts are therefore required from all union contractors to reorganize their labour relations responsibilities so that each trade can be properly represented at the provincial level for negotiating purposes.
27. Accreditation orders now held by local construction associations may prove to be another obstacle in the development of province wide bargaining. Present procedures for obtaining the orders are costly, cumbersome, and protracted. Accordingly it would be unreasonable to expect that those employer groups which have successfully completed this tiresome procedure will willingly surrender their bargaining status to some other organization. Considerable promotion and persuasion will be required, together with the possibility of legislative compulsion.
28. Trade contractors throughout the province could establish Trade Bargaining Councils on a fully representative basis within a central management body such as the Construction Labour Relations Association of Ontario. Such Councils would negotiate province wide agreements with the craft unions, subject to the coordination and policy control of the central management body. The framework of this organization already exists - it requires only a new impetus to encourage all union contractors to support it.

LEGISLATIVE ACTION

29. Successful changes in labour relations are best

achieved by voluntary agreement between the parties. However, the Council notes that construction employers and craft unions have attempted to bring about desirable changes in the past on a voluntary basis but these efforts have been frustrated and have not produced meaningful results. The Council believes that effective implementation of these recommendations can only be achieved by legislative action so that these urgently needed changes can be accomplished before the next major round of construction bargaining in 1977.

Common Terminal Date

30. To avoid the possibility of lawful work stoppages taking place at any time during a negotiating year, this Council has supported the efforts of contractors to achieve a common expiry date for all collective agreements. These efforts have been largely successful and some 80% of all construction agreements in Ontario now terminate on a common date. To ensure that all agreements are keyed to a common terminal date and to prevent any other terminal date from being negotiated in the future, it is recommended that all construction agreements be required by law to commence on a given date in one year and to terminate on a given date in a future year.

SECTORAL BARGAINING AND PARALLEL AGREEMENTS

31. The construction industry is so diversified that separate and distinct labour agreements have developed within its various sectors. The skills and methods used in highway construction, for example, are very different from those employed in building a petroleum refinery or a high-rise office tower. Working conditions throughout the industry are subject to similar diversity, all of which gives rise to a need for separate labour agreements in some sectors.
32. Distinctive labour agreements have emerged covering work in the industrial and commercial sector, the roads sector, the residential sector, the heavy engineering sector and the like. In 1971, revisions to Ontario's Labour Relations Act identified seven construction sectors for labour relations purposes, leaving the definition of each sector to the Labour Relations Board for interpretation when required.
33. Agreements with the craft unions are negotiated by groups of contractors who specialize in the work

within certain sectors. The exceptions to this procedure are, strangely enough, the very largest projects in the multi-million dollar industrial category, which may be classified into more than one sector.

Negotiations covering major projects

34. Large scale construction undertakings are presently governed by one of three different types of collective agreement. A major project may be subject to national agreements, project agreements, or local agreements. Sometimes a combination of these different elements may be present.

National Agreements:

35. The concept of the national agreement was created following World War II in order to meet demands by major owner-clients for some assurances that their construction projects would not be delayed by labour stoppages arising from local area negotiations. Certain industrial contractors, responding to the requirements of their clients, negotiated arrangements with international craft unions whereby their projects would be free from lawful strikes (and lock-outs). In return for this undertaking, the industrial contractors committed themselves to voluntary recognition of the craft unions in each project area. In most cases, national agreements also provided some specific working conditions applicable to major projects which could be at variance with local working conditions.
36. National agreements have on occasion exercised a strong and injurious effect upon local bargaining. The problem they have created concerns the ability and the commitment of the parties concerned to continue working during periods of lawful strikes and lock-outs engaged in by local contractors and local unions. The continuation of employment on major projects at such times strengthens the bargaining position of local unions and provides financial support to them during a strike.
37. In Ontario it was believed that the establishment of accreditation legislation would eventually eliminate national agreements by granting exclusive bargaining rights to designated associations of construction employers. The existing legislation does not, however, clarify the status of national agreements in accredited

areas. In defining an employer for purposes of accreditation, Section 106 (c) of the Labour Relations Act states that

"employer" means a person who operates a business in the construction industry, and for purposes of an application for accreditation means an employer for whose employees a trade union or council of trade unions affected by the application has bargaining rights in a particular geographic area and sector or areas and sectors or parts thereof.

38. An international craft union which has entered into a national agreement with a contractor may not be construed as having bargaining rights 'in a particular geographic area and sector' since it is in fact operating by voluntary recognition on a nation-wide basis. With this interpretation of the Act, a national agreement could lawfully exist in parallel with a local agreement negotiated by an accredited employers' association.
39. (In a decision of record, the Ontario Labour Relations Board excluded certain pipeline contractors who were signatory to a national agreement, from an accreditation order covering the plumbing trade in Hamilton, Ont. This decision relates to a specific case, however, and is not considered by the Board as establishing a principle. Ref: 1189-71-R, Nov. 2, 1972.)
40. There can be no doubt that construction agreements which guarantee the completion of projects without lawful labour stoppages will continue to appeal to some owner-clients. However, this should not be interpreted to mean that owner-clients are willing to pay any price to ensure labour peace on a construction project. In addition, contractors with national agreements may be in an advantageous recruiting position during periods of labour shortages. Such contractors are known nationally to be 'union employers' and they can therefore anticipate union cooperation whenever it is necessary to augment local manpower supplies by recruiting labour from other areas or provinces.
41. Project Agreements:

Project agreements can be similar in nature and effect

to national agreements. These agreements provide for working conditions and allowances on a particular project and may also guarantee that there will be no strikes or lock-outs during the life of the project, which may be as long as ten years. In return for this guarantee, the contractors concerned agree that craft union wage rates negotiated in the local area will be 'picked up' and applied on the project.

Local Agreements:

42. In the absence of national or project agreements, work on major projects is governed by locally negotiated agreements.
43. These area agreements are negotiated by local contractors who often have little or no interest in major construction programs. High subsistence and travel allowances, as demanded by the unions, are frequently included in local agreements since the contractors who negotiate them do not expect to undertake the type of work on which such allowances become payable. On large projects, the payment of these allowances can become an excessive burden on labour costs.
44. A large project under these circumstances is subject to local negotiations and to any lawful labour stoppages that may arise. The project therefore does not provide a haven of employment to local craftsmen during a strike. However, to avoid a strike or to end one, local contractors may be forced into acceptance of new and costly allowances which are designed exclusively for implementation on the major project.

Industrial Construction Agreements

45. Multi-million dollar projects occupy a position of increasing importance in today's construction industry. But, as demonstrated above, the existing collective agreement procedures governing major projects have caused problems. It is of interest to consider the development of separate agreements for these major undertakings, following an experimental introduction in the United States.
46. Prototype industrial agreements exist in Houston, Texas and govern all industrial work with contract values in excess of \$2 million. These agreements

were negotiated by the National Constructors' Association (NCA) with the Houston Building Trades Council, AF of L, in full cooperation with local contractors' associations. These agreements provide less costly allowances and work rules for major projects but this cost reduction was not achieved as the result of any new or more sophisticated bargaining system. It exists as a response from the craft unions and their employers to the rapid growth of non-union industrial construction.

47. Although this situation does not exist in Ontario, the Council considers that it demonstrates a new willingness by some craft unions to up-date their procedures and to cooperate with their employers in keeping union construction competitive.
48. The Council believes that the addition of a special sector for major projects, with separate collective agreements, could become the source of a new fragmentation within the industry through the addition of a new and separate bargaining group. It is therefore recommended that legislative recognition be given to the rights of contractors within the industrial, commercial and institutional sector to negotiate special appendices to provincial agreements to cover work on major projects which is subject to special or unusual conditions.
49. Such appendices would provide uniform work rules and allowances for special projects which would add to or modify the province-wide agreements with each construction trade. This procedure would apply particularly to major projects in remote locations.
50. The recognition of special projects by project appendices would require careful definition of the work. This would be essential to ensure that contractors from other sectors, such as roads, sewers or heavy engineering, could undertake appropriate work on special projects in accordance with the collective agreements governing their own sectors.
51. As noted earlier, national agreements which 'pick up' local wage rates or other conditions undermine local collective bargaining. Such agreements would also exert an injurious effect upon the province-wide bargaining proposed herein. It is therefore recommended that all national agreements with pick up provisions be declared unlawful in the Province of Ontario.

CONCLUSION

52. Province-wide bargaining would reduce the number of negotiating situations in the province to more manageable proportions. But it would also create a framework in which a province-wide strike or lock-out became a possibility.
53. Construction negotiations have often been accompanied by strikes but, with rare exceptions, these strikes have been confined to local areas or regions. Unaffected areas have been able to continue normal operations and this includes major projects, particularly those operating under national agreements. The proposals made herein would eliminate this possibility in the future as one or more construction trades could find themselves in a legal position to strike or lock-out across the entire province.
54. Although this means that the economic losses sustained from construction strikes could be greatly escalated, so would the pressures for settlement of the strikes. The Council believes that the possibility of a province-wide shutdown would strongly motivate the parties towards reaching agreement and would also serve as a deterrent to any hasty use of the strike or lock-out weapon.
55. Province-wide bargaining would eliminate the leap-frogging of wage rates between local areas but it would not necessarily reduce the whip-saw effect of one trade seeking a greater increase than another. Effective coordination of bargaining among the provincial bargaining councils will be required to reduce this problem.
56. Members of this Council are major purchasers of construction and they have traditionally used craft union contractors to build their projects. The level of the construction wage rate or any one element of compensation is not the sole evidence of costliness. The entire union-contractor labour relations package has become so costly that new expansion and development is discouraged. Uncontrolled increases in construction costs combined with legal and illegal work stoppages have now created a serious disenchantment with the industry's labour relations. World-wide problems of inflation and economic instability have forced owner-clients to re-assess

the viability of all current or planned projects. Some projects have already been cut back, postponed or cancelled because increasing construction costs have reduced a planned project to one of marginal economic viability. The cost of construction has become of paramount importance and owner-clients do not feel any obligation to utilize craft union employers if more economic alternatives are available.

57. For its future growth and prosperity, it is absolutely necessary that the construction industry, with government assistance, should undertake a total reform of its labour relations immediately so that essential improvements can be implemented before 1977 negotiations begin.

Respectfully submitted on behalf of

THE OWNER-CLIENT COUNCIL OF ONTARIO

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